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2       UNITED STATES BANKRUPTCY COURT  
3       SOUTHERN DISTRICT OF NEW YORK  
4       Case No. 05-44481

### 8. DELPHI CORPORATION

1996-1997  
Yearly Summary

ZI B E R O K E .

22 HON. ROBERT D. BRINN

25 U.S. BANKRUPTCY JUDGE

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1 MOTION to Authorize Motion For Order Under 11  
2 U.S.C. Section 1113(c) Authorizing Rejection  
3 Of Collective Bargaining Agreements And Under

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4 11 U.S.C. Section 1114(g) Authorizing  
5 Modification Of Retiree Welfare Benefits filed  
6 by John Wm. Butler Jr. on behalf of Delphi  
7 Corporation.

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24 Transcribed By: Esther Accardi

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay.

3 Delphi Corporation.

4 MR. BUTLER: Your Honor, good  
5 morning. Jack Butler from the firm of Skadden  
6 Arps Slate Meagher Flom, LLP, here with my  
7 colleagues from O'Melveny & Myers law firm for  
8 the fifth day of the debtor's section 1113,  
9 1114 contested hearing. Your Honor, we are  
10 moving forward today with the first witness  
11 being Mark R. Weber. I'd like to call Mr.  
12 Weber, who's the executive vice president of  
13 operations human resource management,  
14 corporate affairs of Delphi Corporation. For  
15 cross examination in connection with his  
16 declaration which has been marked Exhibit 14  
17 in the exhibit list which I move into  
18 evidence, subject to cross examination.

19 (The Weber Declaration was hereby  
20 received as Debtor's Exhibit 14 for  
21 identification, as of this date.)

22 MR. BAUMSTEIN: Good afternoon, Your  
23 Honor. Doug Baumstein on behalf of the ad hoc  
24 committee of equity holders. Our concern with  
25 Mr. Weber's declaration and perhaps that this

8

1 may be the time that's appropriate for less or  
2 included relief. There are two things he  
3 addresses. One is sort of the sacrifices made  
4 by the salaried and management employees,  
5 which is really not our issue. But one issue  
6 he does talk about is the Delphi spin-off from  
7 General Motors. And we don't see the  
8 relevance of that in any way to the  
9 proceedings here. And we're very concerned  
10 that there may be factual findings with  
11 respect to that as the spin-off from GM will  
12 be very relevant to the various issues  
13 concerning the validity of General Motors'  
14 claims down the line. And we would just be  
15 concerned about having any factual findings in  
16 the record that could later be used collateral  
17 estopped, any of the parties here, whether  
18 it's General Motors or the creditors'  
19 committee or the equity committee, with  
20 respect to the facts and circumstances  
21 surrounding the spin-off from General Motors.  
22 So perhaps if we knew there was -- if there's  
23 a finding that's irrelevant we don't  
24 necessarily need to preclude the testimony.  
25 But there is a chance that we've not had a

9

1 chance to challenge that testimony which will  
2 at some point be relevant down the line in  
3 this case, although not at this hearing.  
4 THE COURT: I don't understand  
5 anything you said. Collateral estoppel is

6 collateral estoppel. And I think you're  
7 right. I don't think that Mr. Weber's  
8 affidavit really pertains to issues that  
9 creditors and shareholder may have about GM,  
10 but I can't say conclusively that. But I  
11 think it's highly unlikely that it will, given  
12 the different issues under 1113 and 1114 on  
13 the one hand and what I understand of the  
14 committee's and the shareholders' and the  
15 debtor's contentions about GM's claims. So,  
16 you know -- I mean, there may be some  
17 reference to the existence of a benefit  
18 guarantee as part of the analysis under 1113  
19 and 1114. But I think you just have to look  
20 at 1113 and 1114 and see where -- as you said,  
21 it's unlikely there'd be collateral estoppel.  
22 But I can't give you some advance ruling on  
23 that.

24 MR. BAUMSTEIN: Right. Our concern  
25 isn't that it merely identifies the exist, it

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1 talks a lot about the intention of the parties  
2 from the spin-off. And that, obviously, will  
3 be an issue much later in this case. And we  
4 have real concerns that there might be a  
5 factual finding there, although we do not see  
6 the relevance at all.

7 THE COURT: Well, I think you're  
8 probably right about the relevance. But that  
9 will have to be developed. I doubt there's  
10 going to be any -- he's just quoting the

11 documents, as far as I can see. He's quoting  
12 the S4s and S1s that were filed. He's just  
13 quoting them.

14 MR. BAUMSTEIN: Okay.

15 THE COURT: So, that's a matter of  
16 public record. And whether there's anything  
17 more behind it, he hasn't said. So I think  
18 this should not turn into a litigation of,  
19 generally speaking, you know, the company's  
20 financial condition at the time these things  
21 were entered into and what the party's --  
22 whether the parole evidence rule applies, or  
23 what the party's intent was and the like. I  
24 think he's just quoting the language.

25 THE BAUMSTEIN: Okay. Thank you,

11

1 Your Honor.

2 THE COURT: Okay. All right. Mr.  
3 Weber, will you raise your right hand, please?

4 (Witness sworn in.)

5 THE COURT: Just for the record can  
6 you spell your name?

7 THE WITNESS: My name is Mark M-A-R-  
8 K, Weber W-E-B-E-R.

9 MR. KENNEDY: Your Honor, Tom  
10 Kennedy for the IUE-CWA. The order of cross  
11 examination among the unions this morning will  
12 be, after IUE-CWA completes its cross  
13 examination, the UAW, the Steel Workers, the  
14 IAM-IBEW and then the Operating Engineers.

15 THE COURT: Okay.

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16 CROSS EXAMINATION BY

17 MR. KENNEDY:

18 Q. Mr. Weber, you are currently Delphi's  
19 executive vice president of operations and  
20 human resource management, is that correct?

21 A. Corporate affairs, also.

22 Q. All right. And your responsibilities in  
23 that position include overseeing Delphi's  
24 human resource management and corporate  
25 affairs?

12

1 A. And the support staff for operations,  
2 correct.

3 Q. Okay. The date of the spin-off of Delphi  
4 from General Motors was February of 1999, is  
5 that correct?

6 A. I think the completion was in May.

7 Q. The completion was in May, okay. And  
8 would you agree with me that at the time of  
9 that spin-off in May of 1999, from the point  
10 of view of labor relations, putting other  
11 issues aside, Delphi recognized two  
12 imperatives that it had to achieve?

13 A. Go ahead.

14 Q. And those were first, the ability to  
15 negotiate its own labor agreements. And  
16 second, the ability to fix, sell or close on  
17 profitable product lines?

18 A. That's correct.

19 Q. And in May of 1999, you also understood,  
20 you meaning Delphi, that those were

21 imperatives that were only achievable over  
22 time, correct?

23 A. I believe that's correct.

24 Q. And in May of 1999, Delphi was aware that  
25 it would first be able to negotiate

13

1 independently national agreements with the  
2 IUE-CWA and its other national unions in 2007,  
3 isn't that also correct?

4 A. Not in May of 1999, that is not correct.

5 Q. When did Delphi first become aware that  
6 agreements would be entered into that required  
7 it to mirror GM agreements up until 2007?

8 A. In September of 1999.

9 Q. So that some few months after May of  
10 1999, Delphi became aware that it would first  
11 be able to negotiate its labor agreements in  
12 2007?

13 A. Yes.

14 Q. Now, in connection with the spin-off,  
15 Delphi filed various documents including S1s  
16 that identified what its assumptions were  
17 concerning the impact on labor relations of  
18 the spin-off, is that correct?

19 A. Yes.

20 Q. After September of 1999, did Delphi file  
21 any public documents advising that it would be  
22 unable to achieve its imperatives because the  
23 first time it would be able to negotiate its  
24 labor agreements would be 2007?

25 A. I don't recall any.

1 Q. Would you also agree with me that even in  
2 the current collective bargaining context, the  
3 '99 agreement and then the 2003 agreement, the  
4 IUE-CWA has agreed to substantial concessions  
5 with Delphi, if necessary, to allow its plants  
6 to be competitive?

7 A. I believe they have entered into  
8 agreements in an attempt to let the plants be  
9 competitive. We have not been successful in  
10 accessing some of the wage and benefit  
11 concessions to make the plants competitive.

12 Q. And that's because Delphi has assigned  
13 work that could be done at IUE-CWA plants to  
14 other facilities, be they in Mexico or around  
15 the world?

16 A. I think that's principally because of  
17 dropping volumes from our major U.S. customer,  
18 General Motors. It's made it very difficult.

19 Q. Has Delphi assigned any work that could  
20 have been done at IUE-CWA plants with  
21 competitive agreements to either its Mexican  
22 facilities or facilities in other parts of the  
23 world?

24 A. I don't know how -- I don't know the answer to  
25 that ques -- I don't know.

1 Q. How many employees does Delphi currently

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2 have in Mexico doing production work?

3 A. I would guess fifty to sixty thousand.

4 Q. And in 1999, how many employees did

5 Delphi have in Mexico doing production work?

6 A. I would guess a like number.

7 Q. Do those fifty or sixty thousand Mexican

8 production employees do any work that could be

9 assigned to IUE-CWA facilities in the United

10 States?

11 A. Profitably?

12 Q. I didn't ask profitably.

13 A. Oh.

14 Q. I asked if they could be assigned, does

15 that work?

16 A. You can always assign work wherever you

17 want, of course.

18 Q. Okay.

19 A. Yes.

20 Q. And that work could have been assigned to

21 being done under the competitive agreements

22 which start out with wage rates as low as

23 eight dollars an hour?

24 A. It could have.

25 Q. How many production employees, union-

16

1 represented production employees, did Delphi

2 have in 1999?

3 A. I'll do some mental gymnastics and give

4 you a number, okay?

5 Q. Somewhere a little over sixty thousand?

6 A. Around the world?

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7 Q. No. No, in the United States. I'm

8 sorry.

9 A. Oh the United States. Roughly right,

10 yes, I'm sorry.

11 Q. About sixty thousand?

12 A. I think so.

13 Q. And from 1999 through today, in 2006,

14 that number has shrunk to approximately

15 thirty-three thousand, correct?

16 A. That's correct.

17 Q. And that shrinkage from sixty thousand

18 has gone down to thirty-three thousand under

19 the myriad labor agreements that Delphi has

20 entered into with IUE-UAW and the other major

21 unions, correct?

22 A. That's correct, yes.

23 Q. Do you know how many IUE-CWA production

24 employees there were employed by Delphi in

25 1999?

17

1 A. Not specifically.

2 Q. Now, you also indicated that one of the

3 imperatives the company intended to accomplish

4 in 1999 was the ability to achieve more

5 flexible work rules, is that true?

6 A. That's true.

7 Q. Would you agree with me that the

8 Portland, Ohio IUE-CWA plant, represented by

9 Local 717, is an example of the union and the

10 company working together to achieve more

11 flexible rules under the current agreement?

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12 A. Yes.

13 Q. Are you familiar with the Shingo Prize?

14 A. Yes.

15 Q. And what is that?

16 A. It's a prize for manufacturing  
17 excellence.

18 Q. And that prize was bestowed upon the  
19 Portland, Ohio plant, correct?

20 A. As I recall.

21 Q. And didn't the Portland, Ohio plant also  
22 win the 2000 Global Excellence award?

23 A. I don't know.

24 Q. Do you remember?

25 A. Don't remember that.

18

1 Q. Were you familiar with the details of the  
2 work rule agreements that were reached between  
3 IUE-CWA and Delphi at the time that the  
4 Portland, Ohio plant was made operational in  
5 the late 1990s?

6 A. No.

7 Q. Do you know if IUE-CWA essentially agreed  
8 that two people would do the work for three  
9 people who had previously done it in the past?

10 A. I don't know that.

11 Q. Is it the position of Delphi that its  
12 production employees should be paid no more or  
13 no less than the average production wage paid  
14 across all industries and across all sectors  
15 of the economy and geography in the United  
16 States?

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17 A. It's our position that we have to be  
18 competitive in all elements of cost to win  
19 work with our customers. Our customers are  
20 very good at ciphering out the cost structure  
21 of all of their suppliers. And so, we had big  
22 sheets, for example, that we have to fill out  
23 and labor costs are part of the big sheets.  
24 So we don't really have much of a choice  
25 except to be competitive in all elements of

19

1 cost.

2 Q. Well, I'm really directing you to the  
3 testimony of the expert witness in the  
4 beginning of this case that Delphi called.

5 A. Dr. Wachter.

6 Q. Dr. Wachter, yes. To identify the  
7 appropriate wage rate at Delphi production  
8 facilities as no more or no less than the  
9 average production wage across all industries  
10 and sectors. Do you agree with that, that  
11 that's what Delphi's wage rate should be?

12 A. Roughly right, I think that's correct,  
13 yes.

14 Q. How would that average apply to the  
15 individuals working at the Portland, Ohio  
16 plant that have been recognized for their  
17 manufacturing excellence? Should they also  
18 receive no more or less than the average wage  
19 which is paid to production workers across the  
20 United States?

21 A. I -- what do they make? I don't know

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22 what they make.

23 Q. You're unfamiliar with the product in  
24 that plant?

25 A. No. I'm not familiar how much the wage

20

1 rate is there.

2 Q. They pay traditional wage rate, probably  
3 twenty-seven dollars an hour.

4 A. I see. Should that ultimately apply? I  
5 believe it should, yes.

6 Q. In your declaration, Mark, you identified  
7 factors that applied to the compensation of  
8 Delphi's salaried to management employees --  
9 the section begins at paragraph 21 of Exhibit  
10 14, which is your declaration.

11 A. Yes.

12 Q. In there you identify, at least in  
13 paragraph 19, the philosophy that hourly and  
14 salaried employees should be at market levels,  
15 neither higher nor lower?

16 A. That's correct.

17 Q. So is it Delphi's understanding that its  
18 salaried employees are now paid at market  
19 levels?

20 A. The salaried employees are paid -- the  
21 paid salaried employees is targeted at market  
22 levels. They're not necessarily always paid  
23 at target levels because part of the pros at  
24 risk, and they may or may not receive that at  
25 risk pay.

1 Q. Well the -- at the time of the spin-off,  
2 is it accurate to state that salaried Delphi  
3 employees were paid salaries commensurate with  
4 original equipment manufacturer wages?

5 A. I think that the salaried employees' pay  
6 was essentially target at a market value could  
7 pay across the country, not just OE.

8 Q. It wasn't just OE?

9 A. No, it was not.

10 Q. Okay. Now since 1999, Delphi's had a  
11 free hand to design its salaried employees'  
12 wages and benefits, correct?

13 A. That's correct.

14 Q. Since the spin-off in 1999, have any  
15 salaried employees had their wages reduced by  
16 Delphi?

17 A. Base wages or total compensation?

18 Q. Base wages?

19 A. No.

20 Q. And am I correct that based upon the  
21 information in this hearing that the short-  
22 term incentive plan for the first six months  
23 of 2006 is about to pay out sixty million  
24 dollars in short-term incentive compensation  
25 to your United States workforce? Isn't it

1 accurate to state that Delphi's salaried  
2 employees in 2006 will receive a higher  
3 compensation than they did in 2005?

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4 A. You made a couple of points, I'll try to  
5 address them both, okay?

6 Q. Okay.

7 A. The first point is that the sixty million  
8 dollars is the annual target, not the happier  
9 target for those employees. So the happier  
10 target would roughly right be thirty million  
11 dollars.

12 Q. All right. I understood from Kevin that  
13 it was the half year. If I was wrong, I  
14 apologize.

15 A. That preset pay is pay at risk, it's  
16 roughly five and a half percent of the  
17 weighted average pay of the salaried  
18 workforce. And if they were to receive that  
19 it would make them roughly right competitive  
20 with other people across the country. Who  
21 also are point risk and receive it or don't  
22 receive it. So, they're sort of complaintive  
23 on that basis. Will they make more or less  
24 than last year, that was your last part of the  
25 question?

23

1 Q. Yes.

2 A. All things being equal, it will be  
3 higher.

4 Q. Now, in your declaration at paragraph 24,  
5 you provided a chart that highlights the  
6 current differences in compensation between  
7 Delphi's hourly and salaried managerial  
8 employees?

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9 A. Yes, sir.

10 Q. Did that chart represent all of the  
11 important differences between those two types  
12 of employees?

13 A. No. I think -- the other declarations  
14 had other differences.

15 Q. I take it from your chart in paragraph  
16 24, that Delphi's front line supervisors do  
17 receive overtime?

18 A. That's correct.

19 Q. And how many of the fourteen thousand  
20 supervisors at Delphi are eligible for  
21 overtime?

22 A. I don't know how many are front line  
23 supervisors, can't help you.

24 Q. Do you know what the rules and conditions  
25 are for their receiving overtime?

24

1 A. I've lost that, I don't know anymore.

2 Q. Okay.

3 A. Yeah.

4 Q. Now, in your chart, you indicate that  
5 "most hourly employees are entitled to return  
6 to open positions at General Motors." That's  
7 not applicable to IUE-CWA members, is it?

8 A. That's correct.

9 Q. And they represent about twenty-five  
10 percent of your workforce?

11 A. That's correct.

12 Q. So how is it that you indicated that  
13 "most hourly employees are entitled," you mean

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14 the majority?

15 A. Majority, right. Sure.

16 Q. You also mentioned staffing requirements.

17 Do any IUE contracts allow for outsourcing?

18 A. I don't know that they specifically  
19 they -- the contracts, the IUE contracts. But  
20 local contracts?

21 Q. Yes.

22 A. I don't know.

23 Q. Do you know whether the IUE local plant  
24 contracts that allow for temporary employees  
25 to be brought actually inside the plant to

25

1 perform production work, if necessary, to meet  
2 production goals?

3 A. I think there are some, yes.

4 Q. And those temporary employees are not  
5 covered under the collective bargaining  
6 agreements, correct?

7 A. That's correct.

8 Q. The company has a right to set those  
9 wages and benefits at whatever level they  
10 want?

11 A. I believe so.

12 Q. And there's no restriction on bringing in  
13 or laying off or terminating those employees  
14 and any of the union contracts?

15 A. I believe so.

16 Q. So that the reference to the staffing  
17 requirements that appear in your chart don't  
18 apply to the IUE-CWA plants that allow

19 temporary employees, do they?

20 A. It would not apply to those employees.

21 Q. Now, at paragraph 25 of your declaration,

22 you -- and 26, you identify the reductions in

23 the ranks of the salaried and management

24 employees that you expect will occur as a

25 result of your reorganization, is that

26

1 correct?

2 A. Both the reorganization and the SG&A

3 initiative, both.

4 Q. All right. And I take it that together,

5 if we were looking at the impact of both of

6 those programs, we would lose thirty-six

7 hundred salaried employees as a result of

8 sales or wind-downs of Delphi production

9 operations and another sixteen hundred under

10 the SG&A program?

11 A. In the U.S., that's right.

12 Q. In the U.S., yeah. Now, have you

13 computed the percentage of salary to

14 management employees that those reductions

15 represent?

16 A. No, but it's something like a thirty to

17 forty percent, roughly.

18 Q. And the proposals that the company has

19 provided to the IUE would require it to lose

20 seventy-seven percent of its membership,

21 correct?

22 A. I don't know, is that right? It's right,

23 it's right, don't know the answer to that one.

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24 Q. You don't know?

25 A. No.

27

1 Q. Do you have any idea what the approximate  
2 percentage reduction of IUE membership would  
3 be under the proposals the company has  
4 provided?

5 A. It would be high.

6 Q. It would be much higher than the one-  
7 third to forty percent that's affecting the  
8 salaried to managerial employees, correct?

9 A. I believe so.

10 MR. KENNEDY: All right. I have no  
11 further questions, Your Honor.

12 THE COURT: Okay.

13 MR. LEVINE: Good morning, Mr.  
14 Weber. Your Honor, Bruce Levine, Cohen Weiss  
15 & Simon for the UAW.

16 CROSS EXAMINATION BY

17 BRUCE LEVINE:

18 Q. Mr. Weber, do you have your declaration  
19 in front of you, sir?

20 A. Yes, I do.

21 Q. Would you please turn to paragraph 19?

22 A. I have it.

23 Q. Okay. Now, you state in your declaration  
24 in paragraph 19, do you not, that Delphi's  
25 philosophy is that "the compensation of its

28

1 entire workforce, including its hourly and  
2 salaried employees, should be at market  
3 levels, neither higher or lower."

4 MR. BUTLER: Objection. Your Honor,  
5 this question -- and this was asked on the  
6 last cross examination. Are we going to go  
7 over the same territory that Mr. Kennedy --

8 THE COURT: Well, let's see where  
9 he's going --

10 MR. LEVINE: Your Honor, I can  
11 assure you that I will endeavor not to repeat  
12 Mr. Kennedy's questions.

13 THE COURT: Okay.

14 MR. LEVINE: I can assure you too,  
15 Mr. Butler?

16 A. The answer's yes.

17 Q. Thank you. Now as I understand it, your  
18 contention that Delphi does, in fact, or at  
19 least has tried to pay market rates with  
20 respect to Delphi's salaried and managerial  
21 workforce, is that correct?

22 A. Yes, sir.

23 Q. Okay. Now, turning to your declaration  
24 at paragraph 25, you indicate that Delphi  
25 employs approximately 14,300 salaried and

1 managerial employees in the United States, is  
2 that correct?

3 A. Yes, sir.

4 Q. And in establishing a market rate for the

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5 base salary of salaried and managerial  
6 employees, is it your contention that Delphi  
7 looked to what similarly situated employees of  
8 a comparator group of companies are paid?

9 A. Largely speaking, yes.

10 Q. Okay. And with respect to the  
11 comparative group of companies used to  
12 establish the base salary market rate for  
13 salaried and managerial employees, you state  
14 in your declaration at paragraph 23, that you  
15 look to companies of similar size to that of  
16 Delphi's, is that correct?

17 A. That's correct.

18 Q. Okay. And I take it you stand by that  
19 statement in your declaration, is that  
20 correct?

21 A. Yes, I do.

22 Q. Okay. Now in the last sentence of  
23 paragraph 23, you state that "the design and  
24 modifications to the compensation approach  
25 resulted from studies and recommendations of

30

1 independent expert compensation consulting  
2 companies." That statement is accurate,  
3 correct?

4 A. Yes, sir.

5 Q. Okay. Could you identify the independent  
6 expert compensation consulting companies that  
7 you are referring to in paragraph 23?

8 A. It used to be Mercer Consulting, it's now  
9 Watts & Wyatt.

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10 Q. And what did each of those companies do?

11 I guess first Mercer and then Watts?

12 A. What is their methodology is that what

13 you're asking me?

14 Q. What did they do for you, for Delphi?

15 A. Well, first of all, they didn't work for

16 Delphi they worked for the board of directors

17 of Delphi. Because the board of directors has

18 an independent compensation committee, and

19 they worked for that committee. So they --

20 Mercer did, at the spin-off, a look at the

21 various compensation plans that are around

22 corporate American. They compared a group of

23 companies and designed the compensation system

24 that the board ultimately approved. Watts &

25 Wyatt updated it a year or so ago to help

31

1 understand the most current thinking and to  
2 provide the board with the recommendations of  
3 that approach for compensation.

4 Q. Okay. And did either of those consulting  
5 companies issue any written reports to the  
6 board of directors of Delphi?

7 A. I believe so.

8 Q. And when were those reports issued, if  
9 you know?

10 A. Well one would have been around '99.

11 Q. Right.

12 A. That doesn't count.

13 Q. Fair enough.

14 A. And -- I don't recall the most recent

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15 one -- the date of that. I don't know.

16 Q. And do you know whether the results of  
17 those studies have been provided to the UAW or  
18 to any of the unions in connection with this  
19 proceeding and the negotiations between the  
20 parties?

21 A. I do not know.

22 Q. Okay. Now would you please refer, once  
23 again, to paragraph 24 of your declaration?

24 A. Yes.

25 Q. And, again, that, as I understand it from

32

1 reading your declaration, highlights the  
2 current differences in compensation and job  
3 security provisions between Delphi's hourly  
4 employees and its salaried and management  
5 employees?

6 A. It lists some of them, correct.

7 Q. Okay. Now, as Mr. Kennedy pointed out,  
8 that chart doesn't deal with a number of other  
9 indicia of compensation for salaried and  
10 managerial employees, is that correct?

11 A. That's correct.

12 Q. Okay. And it doesn't deal with the  
13 short-term incentive plan as Mr. Kennedy asked  
14 you about, is that correct?

15 A. That's correct.

16 Q. Now as I understand it, Delphi  
17 anticipates that its annual expense for that  
18 program will be approximately seventy million  
19 dollars, not sixty million dollars through

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20 2010, is that correct?

21 A. I think one is a target and one includes  
22 FICA taxes on top of that.

23 Q. Okay. But the cost to Delphi inclusive  
24 of those taxes is seventy million dollars --

25 A. I believe --

33

1 Q. -- rather than sixty million dollars --

2 A. I believe that's correct.

3 Q. Let me finish my question, please?

4 A. I'm sorry.

5 Q. Is that correct?

6 A. Yes.

7 Q. Okay. Thank you. And as I also  
8 understand it, Mr. Weber, this expense has not  
9 been adjusted downward to take into account  
10 planned reduction in Delphi's salaried and  
11 management workforce through 2010, is that  
12 correct?

13 A. I believe that's correct.

14 Q. And as I understand from your  
15 declaration, Delphi plans to reduce its  
16 salaried and management workforce by more than  
17 five thousand workers over the next five  
18 years, is that correct?

19 A. That's correct.

20 Q. So this remaining reduced workforce will  
21 be eligible to receive a higher per capita  
22 piece of the annual expense for that program,  
23 is that correct?

24 A. Is your question will the same amount of

25 money be available to your people?

34

1 Q. Correct.

2 A. No.

3 Q. And how do you explain that?

4 A. Because groups of employees in those  
5 classifications have a target of incentive pay  
6 and the target times the number of employees  
7 is the number.

8 Q. Okay. But the company has not adjusted  
9 downward the seventy million dollar expense  
10 that is available under that program in  
11 connection with transformation, is that  
12 correct?

13 A. I don't believe we have yet done that,  
14 that's true.

15 Q. Okay. You have not yet done that?

16 A. Correct.

17 Q. Thank you. Now I want to ask you a  
18 couple of questions about Delphi's plans to  
19 reduce its salaried and managerial workforce.  
20 And as I understand it, from your declaration,  
21 just to be clear, 3,650 --

22 MR. LEVINE: Withdrawn.

23 Q. Thirty-six hundred and fifty salaried and  
24 managerial employees will be reduced as a  
25 result of the transformation and the wind-

35

1 downs, is that correct? Through 2010?

2 A. That's correct.

3 Q. Okay. And another sixteen hundred  
4 salaried and managerial employees will be  
5 eliminated based upon the recommendations of  
6 Booze Allen on SG&A expense, is that correct?

7 A. Yes, these are EF numbers right?

8 Q. Okay. Now I did the actual calculations.

9 That's a thirty-seven percent reduction, does  
10 that sound fair?

11 A. Sounds fair.

12 Q. Okay. I also went to the same school as  
13 Dr. Wachter, so you might want to check. Just  
14 kidding. Dr. Wachter and I know each other.

15 Now, as Mr. Kennedy focused on with respect to  
16 IUE, this reduction in both absolute and  
17 percentage terms is far less than the number  
18 of domestic hourly workers overall of all  
19 unions will lose their jobs, do you agree with  
20 that?

21 A. Yes.

22 Q. In fact, Delphi proposes, and I get this  
23 out of Mr. Butler's declaration, and we can go  
24 there if you like, Delphi proposes that as  
25 part of its proposed transformation it will

1 reduce its domestic hourly workforce from  
2 approximately thirty-three thousand workers to  
3 roughly six thousand workers. Is that  
4 correct?

5 A. I accept the declaration statement you  
6 made, yes.

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7 Q. That is based on paragraph 11, for the  
8 record, and paragraph 25 of Mr. Butler's  
9 declaration. So using Mr. Butler's figures,  
10 and assuming my math is correct again, it  
11 appears that Delphi plans to reduce its  
12 salaried and managerial workforce by  
13 approximately thirty-seven percent. And to  
14 reduce its domestic hourly workforce by  
15 approximately eighty-two percent, does that  
16 sound correct?

17 A. Okay.

18 Q. Okay. Now, if these head count  
19 reductions are put into effect, Delphi plans  
20 to employ more salaried and managerial workers  
21 in the U.S. than hourly workers in the U.S.,  
22 is that correct?

23 A. Yes.

24 Q. More particularly, according to my math,  
25 Delphi plans to employ approximately six

37

1 thousand hourly workers by 2010 and  
2 approximately nine thousand salaried and  
3 management workers at that time, does that  
4 sound correct?

5 A. It sounds correct.

6 Q. Okay. Now I want to ask you a couple of  
7 questions about the Booze Allen study  
8 concerning SG&A expense. Are you familiar  
9 with that study? You did refer to it in your  
10 declaration.

11 A. Yes, I am familiar.

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12 Q. Okay. Now, as I understand it, Booze  
13 Allen proposes changes that by 2010 would  
14 yield annual savings of 450 million dollars at  
15 steady state, is that correct?

16 A. Yeah. My declaration is a little old.  
17 The number is now 540 million dollars.

18 Q. And that -- it's 540 million dollars  
19 because that overlays the transformation, is  
20 that correct?

21 A. Yes.

22 Q. Okay. So there's an additional projected  
23 savings based upon the anticipated  
24 transformation of ninety million dollars?

25 A. Yes.

38

1 Q. So that marginal ninety million dollars  
2 is related to Delphi's planned shutdown of  
3 twenty-one of twenty-eight of its domestic  
4 facilities, is that correct?

5 A. Yes.

6 Q. And its only ninety million dollars even  
7 though twenty-one of twenty-eight facilities  
8 are planned to be closed, is that correct?

9 A. Yeah. You can only take the SG&A out  
10 where it is.

11 Q. Yes or no?

12 A. Yes.

13 Q. Now, as I understand it, one of the  
14 findings made by Booze Allen was that Delphi's  
15 SG&A expense, measured as a percent of  
16 Delphi's sales, was higher than its peers, is

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17 that correct?

18 A. I don't know that.

19 Q. You don't know that?

20 A. No.

21 Q. Okay. So you don't know that even after  
22 the transformation, Delphi's SG&A expense  
23 measured as a percent of its sales, will still  
24 be higher than the average SG&A measured as a  
25 percent of its peers?

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1 A. I do not know that.

2 Q. You do not know that. Okay. Isn't it  
3 also -- well, I don't know if you know this,  
4 but as I understand it, after the  
5 transformation Delphi's SG&A expense, measured  
6 as a percent of sales, will be roughly the  
7 same as it is currently, do you know that?

8 A. I believe it will be lower.

9 Q. How much lower?

10 A. Five hundred and forty million dollars  
11 lower.

12 Q. As --

13 A. I'm going to have to calculate it now in  
14 my head.

15 Q. I calculate about .4 percent, does that  
16 sound right?

17 A. Could be.

18 Q. Okay. Mr. Weber, I have no further  
19 questions. Thank you, sir.

20 CROSS EXAMINATION BY

21 LOWELL PETERSON:

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22 Q. Good morning, Mr. Weber.

23 A. Good morning.

24 Q. Lowell Peterson, Meyer, Suozzi, English &

25 Klein, for the steel workers. Your

40

1 declaration speaks of the mirror agreement  
2 pursuant to which Delphi would -- that  
3 Delphi's collective bargaining terms would  
4 mirror those of General Motors' collective  
5 bargaining agreements. That doesn't apply to  
6 the steel workers, correct?

7 A. No. They have a different structure.

8 Q. And, in fact, the collective bargaining  
9 agreements between Delphi -- the terms of the  
10 collective bargaining agreements between  
11 Delphi and the steel workers now are  
12 substantially different from the terms between  
13 the steel workers and GM had been, correct?

14 A. They are different.

15 Q. In fact, the wages are substantially  
16 lower than they had been at GM, correct?

17 A. I think the all-in wage for the UAW I'd  
18 roughly right at seventy-seven and the current  
19 all-in wage for the steel workers is fifty-  
20 seven now, roughly right.

21 Q. Well, that's not a weighted average?

22 A. Yeah, I think it is.

23 Q. You're aware of the wage rates at  
24 Vandalia?

25 A. Yes.

1 Q. You're aware that the substantial  
2 majority of people -- of steel workers  
3 represented employees at Vandalia are  
4 nontraditionally paid?

5 A. I believe they are.

6 Q. Right. And they don't -- they're not on  
7 traditional benefit plans either, medical or  
8 pension, correct?

9 A. Yeah.

10 Q. All right. You talked about the -- in  
11 your declaration and in testimony about the  
12 company's need for flexibility in work rules  
13 and flexibility in adjusting not only  
14 production methods but also the size of the  
15 workforce. Isn't it true that the steel  
16 workers negotiated more flexible terms both in  
17 terms of wages and work rules with Delphi  
18 several times since the spin-off?

19 A. I believe they have.

20 Q. And most recently that was at the  
21 Vandalia plan where there was substantial  
22 concessions by the union both with respective  
23 to work rules and wages, correct?

24 A. I believe so.

25 Q. Steel workers don't have any flow-back

1 rights to General Motors, correct?

2 A. I don't think so.

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3 Q. I don't want to repeat too much about the  
4 comparisons of salary versus hourly job loss.  
5 But if I could just bring it home to the steel  
6 workers' scenario. Home Avenue is going to be  
7 out of the Delphi system under the current  
8 plans, correct?

9 A. Correct.

10 Q. And that's where the substantial majority  
11 of steel workers employees currently work?

12 A. Correct.

13 Q. So, in fact, Delphi will have  
14 approximately twenty percent as many steel  
15 workers post-transformation as it currently  
16 has?

17 A. Could be. I haven't done the calc.

18 Q. All right. Let's talk a little bit about  
19 the salaried concessions that you've addressed  
20 in your declaration. For example, at  
21 paragraph 24, I note you didn't mention the  
22 salaried employee retirement plan in your  
23 declaration.

24 A. No.

25 Q. All right, that's the -- as I understand

43

1 it, from prior testimony, the liabilities that  
2 Delphi has under the SERP are approximately  
3 300 million dollars, does that sound right?

4 A. We're talking about the executive SERP  
5 program now?

6 Q. That's correct.

7 A. Yes. That's what John said yesterday.

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8 Q. All right. Now, do you know whether that

9 covers just U.S. executives or global?

10 A. I believe it's only U.S.

11 Q. All right. So if I divide that's about

12 450 people?

13 A. Roughly right.

14 Q. All right. That's approximately 667

15 thousand dollars each then?

16 A. Is that the math finds?

17 Q. I think so.

18 A. Okay.

19 Q. I didn't go to the same school, but I am

20 a lawyer, so we could double check.

21 A. I could have brought a calculator if I'd

22 have known.

23 Q. It's 667 thousand dollars each.

24 A. Okay.

25 Q. Now, in 2005, Delphi terminated a

44

1 deferred compensation plan covering executives  
2 too, correct?

3 A. I don't know what that is.

4 Q. Well according to -- well, let me ask you  
5 a different way. You're aware that executives  
6 received substantial payments in 2005 related  
7 to termination of a plan, correct?

8 A. I'm working it out, yeah. Part of our  
9 total compensation package was eliminated,  
10 that's correct.

11 Q. All right. And -- where it was  
12 eliminated, executives received cash payments,

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13 correct?

14 A. I want to be very careful to make sure  
15 we're talking about apples to apples. There  
16 was a deferred compensation program where  
17 people put money in the program -- their own  
18 money in the program. And we did, in fact,  
19 terminate that and they got their own money  
20 back out, is that what you mean? That's the  
21 only one I know of right now.

22 Q. There was a tax -- was that a tax  
23 qualified plan you're talking about now?

24 A. I don't know about the tax qualification  
25 of that, but there was a deferred compensation

45

1 program. Some people put money in that plan.  
2 We deferred the program -- we cancelled the  
3 program and they got their money out.

4 Q. Why was that program terminated?

5 A. As I recall, the law was changing, it was  
6 making it very complex to administer and it  
7 just wasn't worth it for us to have it any  
8 longer.

9 Q. So if I ask you a question of whether  
10 there was a "tax bubble payment made by Delphi  
11 in connection with a termination" you wouldn't  
12 be able to answer that?

13 A. I wouldn't know that, no.

14 Q. All right. Do you know anybody who might  
15 be able to answer that question?

16 A. You have to talk to a tax attorney, I  
17 think.

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18 Q. No, I mean at Delphi?

19 A. Oh, at Delphi. Well, sure.

20 Q. I'd rather not talk to a tax attorney.

21 A. Our chief tax man could tell you that.

22 Q. All right. He would know whether, in

23 fact, Delphi bubbled those payments? By

24 bubble I mean -- it's a generic term that

25 Delphi paid additional amounts to account for

46

1 tax liabilities that the executives incur?

2 A. Oh, I don't know. I don't know that.

3 Q. You don't one or the other?

4 A. No.

5 Q. The executives did receive R&R grants,

6 several hundred thousand -- some of them,

7 several hundred thousand dollars apiece in

8 2005, correct?

9 MR. BUTLER: Objection. Foundation.

10 Can you just state for the record what R&R  
11 grant is?

12 Q. Do you know what an R&R grant is?

13 A. Are you talk about the retention  
14 recognition grant?

15 Q. Correct.

16 A. Yes.

17 Q. All right. They received those payments?

18 A. Yes.

19 Q. Okay. And do you know when in 2005 they  
20 received those payments?

21 A. Q4, Q3, something around that time frame.

22 Q. Around the time that the bankruptcy

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23 petition was filed?

24 A. Before it.

25 Q. Q3 would be shortly before?

47

1 A. Yeah, I think it was before.

2 Q. Okay. But after the refinancing, that  
3 we've heard testified about, was closed in  
4 June?

5 A. Yes, I think that's right.

6 Q. Now, you're familiar with the key  
7 employee compensation program that Delphi has  
8 obtained partial approval from, from this  
9 Court?

10 A. That is correct.

11 Q. Delphi currently plans to obtain approval  
12 for the entire balance of that program before  
13 this Court in July, correct?

14 A. Correct.

15 Q. Thank you. I'm sorry, I missed one  
16 question. In 2005, executives in the G band  
17 received pay increases of twenty-five thousand  
18 dollars a year, correct? If you know?

19 A. In 2005, executives in the G band?

20 Q. Yes. You know what -- the executives are  
21 classified by --

22 A. Yeah, I know that. But I don't recall a  
23 twenty-five thousand dollar pay increase in  
24 2005 in the G band, I don't recall that.

25 Q. All right.

48

1 A. Okay.

2 Q. But that information is available in  
3 documents provided by Delphi, correct? I  
4 don't mean to be --

5 A. I'm assuming it is. I just don't recall  
6 executives in the G band all getting a twenty-  
7 five thousand dollar increase in 2005. I  
8 don't recall that.

9 Q. Okay.

10 A. Yeah.

11 Q. I don't mean to be mysterious about this,  
12 we obtained that --

13 A. I understand.

14 Q. -- document in connection with the KECP.  
15 We'll work out the evidentiary issue.

16 A. Okay.

17 Q. If he doesn't remember, he doesn't  
18 remember. That's okay. Thank you.

19 CROSS EXAMINATION BY

20 MS. ROBBINS:

21 Q. Good morning, Mr. Weber.

22 A. Good morning.

23 Q. Marianne Robbins representing the IAM and  
24 the IBEW. Are you familiar with the labor  
25 agreements involving Irvine, California?

1 A. No.

2 Q. Would the same be true with Landrum,  
3 South Carolina?

4 A. Yes.

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5 Q. You held the human resource position at  
6 the time of the spin-off, is that right?

7 A. Yes.

8 Q. Are you aware of the communication  
9 provided to IAM and IBEW members as to the  
10 impact of the spin-off on them?

11 A. No.

12 Q. Were you involved in negotiations with  
13 General Motors concerning the benefit  
14 guarantees?

15 A. No.

16 Q. Who at Delphi was involved in those?

17 A. No one was. That's the guarantee between  
18 unions and General Motors, not between us and  
19 the parties.

20 Q. Well there were agreements, were there  
21 not? There is an employee matters agreement  
22 with GM and Delphi, is there not?

23 A. Yes.

24 Q. And were you involved in negotiating  
25 that?

50

1 A. Yes.

2 Q. Are you aware of whether or not a copy of  
3 that document has been provided to the IAM and  
4 IBEW?

5 A. I am not.

6 Q. Was there also a separation agreement  
7 between Delphi and General Motors that  
8 involved employee separation?

9 A. Yes.

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10 Q. Were you involved in that?

11 A. Insofar as the employee management  
12 agreement was part of that, yes.

13 Q. And do you know whether a copy of that  
14 has been provided to the IAM and IBEW?

15 A. No, I don't.

16 Q. And do those agreements which --

17 A. I'm sorry?

18 Q. Do those agreements provide some  
19 information on the impact of the spin-off on  
20 various groups of employees?

21 A. In what sense?

22 Q. I don't know, I don't have the agreement.

23 A. Oh.

24 MR. BUTLER: Objection, Your Honor.

25 That statement by counsel -- the agreement

51

1 she's testifying to -- she's talking about are  
2 in the exhibits of this trial. And for her to  
3 say to the Court or suggest to the witness she  
4 doesn't have them, I think we need to have the  
5 record be corrected.

6 MS. ROBBINS: Counsel, you can --

7 MR. BUTLER: My objection is to the  
8 Court.

9 THE COURT: Which agreements are you  
10 talking about now? I wasn't sure which ones  
11 your question related to.

12 MS. ROBBINS: Your Honor --

13 THE COURT: The separation  
14 agreement?

15 MS. ROBBINS: The separation  
16 agreement and employee matters agreement.

17 MR. BUTLER: The employee matters  
18 agreement is Exhibit 251. The separation  
19 agreement is Exhibit 254.

20 MS. ROBBINS: That's helpful  
21 information, Your Honor. As you know, the  
22 exhibits have been coming in after this trial  
23 began. It's a moving target in terms of what  
24 documents are and are not in. And it's  
25 unfortunate that I should have to take up the

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1 Court's time asking those questions.

2 THE COURT: Okay.

3 BY MS. ROBBINS:

4 Q. Mr. Weber?

5 A. Yes, ma'am?

6 Q. Are you aware that the IAM and IBEW  
7 requested information concerning salaried  
8 compensation and any concessions salaried  
9 employees may have taken?

10 A. No.

11 Q. Are you aware that they were informed  
12 that that information would not be provided to  
13 the unions?

14 A. No.

15 Q. If, in fact, other evidence would  
16 establish that the unions, the IAM and IBEW  
17 requested that information and were denied  
18 that information, would you agree that that  
19 would impact the union's ability to evaluate

20 your claim that salaried employees are

21 receiving market rate?

22 A. It could.

23 Q. And that would impact the union's ability

24 to evaluate Delphi's proposal to them to cut

25 their wages, isn't that right?

53

1 A. I don't know. You're asking me to get  
2 inside your head now and I don't know.

3 Q. No. I'm asking you, sir, whether or not  
4 information concerning the impact or the  
5 compensation and concessions made by salaried  
6 employees is relevant to evaluating Delphi's  
7 proposal to the IAM and IBEW?

8 A. It could be.

9 Q. On the issue of the impact of Delphi's  
10 plans on the IAM and IBEW, are you aware that  
11 one hundred percent of the employees they  
12 represent are scheduled to lose their jobs by  
13 the end of 2007?

14 A. I believe that's true.

15 Q. You have a chart on page -- on paragraph  
16 24 of your declaration. Are you aware that  
17 the IAM and IBEW do not have flow-back rights  
18 to General Motors?

19 A. I believe that's correct.

20 Q. In your declaration, sir, you make  
21 reference to 470 salaried employees quitting,  
22 or leaving their positions over a six-month  
23 period?

24 A. Yes.

25 Q. That would be -- if it kept at that rate,

54

1 which we don't know, 940 for year. Is that  
2 right?

3 A. That's correct. It would be two times  
4 that number.

5 Q. Huh?

6 A. Two times that number.

7 Q. And you have 14,300 salaried employees,  
8 is that right?

9 A. Yes.

10 Q. So that would be a 6.6 quit rate?

11 A. Yes.

12 Q. And according to your expert, Dr.  
13 Wachter, the economy wide quit rate, which he  
14 would consider appropriate for determining  
15 whether or not compensation is competitive is  
16 23.7 percent, isn't that right?

17 A. I can't answer to that number.

18 Q. But in any case, the quit rate among  
19 salaried employees is far less than 23.7  
20 percent, isn't that right?

21 A. That's less than that number, that's  
22 right.

23 MS. ROBBINS: No further questions.

24 THE COURT: Okay.

25 CROSS EXAMINATION BY

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1 MS. MEHLSACK:

2 Q. Good morning, Mr. Weber.

3 A. Good morning.

4 Q. Barbara Mehlsack representing the  
5 operating engineers. Could you turn to  
6 paragraph 12 of your declaration?

7 A. I have it.

8 Q. Okay. When you state that one of the  
9 goals that Delphi had at the time of the spin-  
10 off was to -- the ability to negotiate its own  
11 national and local agreements, establish more  
12 flexible work rules in order to achieve  
13 productivity improvements. And in the absence  
14 of those productivity improvements, Delphi  
15 would have to address allegedly noncompetitive  
16 wages. Are you aware of any efforts on the  
17 part of Delphi to achieve flexibility in work  
18 rules --

19 BY MS. MEHLSACK: Question

20 withdrawn.

21 Q. Back up. Are you aware that the  
22 agreements between the operating engineers and  
23 Delphi are negotiated at the local level  
24 already?

25 A. Yes.

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1 Q. And are you aware of any efforts by  
2 plant -- by Delphi plant managers to achieve  
3 flexibility and work rules that was resisted  
4 by the operating engineers?  
5 A. I have no specific knowledge of that.

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6 Q. And are you aware of any specific  
7 productivity improvements that have been  
8 sought by Delphi plant management from the  
9 stationary engineers that have been resisted  
10 by the stationary engineers?

11 A. I'm not aware.

12 Q. Would it be fair to say that when you're  
13 talking about productivity improvements,  
14 you're talking about production employees,  
15 basically?

16 A. No.

17 Q. Are you talking about specific  
18 productivity improvements with respect to the  
19 stationary engineers?

20 A. Productivity crosses the entire  
21 workforce, hourly and salaried, I would say,  
22 yes.

23 Q. But you cannot identify, specifically,  
24 any productivity improvement sought from the  
25 stationary engineers?

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1 A. I'm not aware of any specific  
2 conversation, no.

3 Q. Turn to paragraph 13 of your declaration,  
4 please.

5 A. I have that.

6 Q. Address the problem of the unfunded  
7 liabilities, OPEB, and the hourly retirement  
8 plan. Those are basically what Delphi has  
9 called its legacy -- retiree legacy  
10 liabilities, is that correct?

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11 A. Goes to the liabilities at that time.

12 Q. Okay. Are you aware of whether there are  
13 any liabilities in connection with the  
14 stationary engineers?

15 A. I don't know.

16 Q. In that nature?

17 A. I don't know what those specific  
18 liabilities are. No, I don't know.

19 Q. You referenced the GM benefit guarantee,  
20 at paragraph 18, as alleviating the impact on  
21 Delphi's employees of the concessions?

22 A. Yes.

23 Q. Are you aware whether or not the  
24 operating engineers have the GM benefit  
25 guarantee?

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1 A. I do not believe I negotiated with them,  
2 no.

3 Q. Have you -- in connection with those  
4 hourly retirement plan obligations, are you --  
5 have you looked at the consequences for the  
6 employees who don't have the GM benefit  
7 guarantee, the termination of the HRP, the  
8 hourly retiree plan?

9 A. Can you help it with consequences?

10 Q. Have you or has anyone on your staff done  
11 a calculation of what benefit levels would be  
12 guaranteed by the PBGC in the event there was  
13 a termination of the HRP?

14 A. I haven't done that, but I'm sure someone  
15 has done that.

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16 Q. But you have today no knowledge of how,  
17 for example, the stationary engineers would be  
18 affected if the plan were terminated?

19 A. I cannot specifically talk about that,  
20 no.

21 Q. Now, turning to paragraph 29 of your  
22 declaration. You talk about the importance of  
23 retaining the knowledge base of skilled  
24 engineers. Wouldn't that apply to the skilled  
25 trades and skilled engineers who are part of

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1 the operating engineers, bargaining units, as  
2 well as the engineers that you referenced?

3 A. I would think it's important to retain  
4 the right amount of employees, sure.

5 Q. And are you aware of the fact that at the  
6 Columbus plant your --

7 BY MS. MEHLSACK: Question  
8 withdrawn.

9 Q. Do the labor relations negotiators report  
10 ultimately to you?

11 A. Ultimately, yes.

12 Q. Okay. Can you help me with chain of  
13 command. Is it you to Mr. Butler, to Mr. --

14 A. Mr. Kidd.

15 Q. Mr. Kidd and then Mr. Gerling would  
16 report to Mr. Kidd?

17 A. I believe that's right.

18 Q. Okay. Has Mr. Gerling provided you with  
19 any summaries of negotiations with the  
20 operating engineers?

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21 A. No, he hasn't. Mr. Butler has talked to

22 me about them, generally.

23 Q. But you've not received any written

24 summaries from Mr. Gerling or any written

25 summaries from anyone in the chain of command

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1 summarizing the state of negotiations?

2 A. That's correct.

3 Q. So, are you aware, however, that Mr.

4 Gerling has advised the stationary engineers

5 of Columbus that Delphi wants to control the

6 take on of any attrition plan in order that

7 Delphi be able to retain the necessary number

8 of skilled engineers at that plant until the

9 closing of the plant?

10 A. Not specifically.

11 Q. You have no awareness of that?

12 A. Huh-uh.

13 Q. There's been some discussion of the KECP

14 and the short-term aspect of it and its

15 extension to salaried employees. And you

16 mention that the employees are grouped in

17 terms of their achievement in certain targets.

18 Now, do those groups cut across plant lines or

19 are they plant specific?

20 A. Well, you have to help me to be more

21 specific on the question.

22 Q. If a plant is experiencing a loss --

23 A. Yes.

24 Q. -- will an employee in a specific group

25 that's met its target nationwide get a short-

1 term benefit regardless of whether or not the  
2 specific plant that salaried employee is  
3 associated with is experiencing losses?

4 A. Okay. I'm not being evasive, I'm just  
5 trying to be precise. Classified salaried  
6 employees in the plants that I think you are  
7 talking about are not part of the KECP.

8 Q. So there are no salaried employees in any  
9 plants who will be eligible for the KECP?

10 A. If there are executives in those plants,  
11 they could be eligible.

12 Q. But Delphi plans to extend that KECP and  
13 seek permission to -- as I understand it,  
14 believes it already has permission, through  
15 the human hourly attrition program order at  
16 the beginning of the case, to further extend  
17 that plan to its salaried employees?

18 A. It's a very different plan. The KECP and  
19 the salaried incentive plan are different  
20 plans.

21 Q. Well, let's talk about the KECP. If I'm  
22 an executive at a plant that's losing money,  
23 would I receive a KECP benefit if I'm in a  
24 category that nationwide will get that  
25 benefit, regardless of whether my plant that

1 I'm associated with is losing money?

2 A. I'll be precise, again, to the question.

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3 The design of the KECP is what the targets --  
4 corporate targets, individual targets. Both  
5 have impact on that individual new plan  
6 because anybody in the plant will be in the  
7 version. So roughly, you're right. Let me  
8 just say this, maybe this will be helpful.

9 Q. Could you -- I'm sorry, I'm having  
10 trouble hearing you.

11 A. I'm sorry. Oh, I'm too close. Is this  
12 better?

13 Q. Yes.

14 A. Oh, I'm sorry. The KECP for executives  
15 for plant people, which is the annual and  
16 standard we're talking about for the first six  
17 months, has a component that is divisional and  
18 a component that is corporate. And it will be  
19 possible, if the division and the corporation  
20 hit its number, for a person in the plant to  
21 have a pay-out.

22 Q. So take the Rochester plant, for example,  
23 which is losing money at this point, right?

24 A. Yes.

25 Q. It is possible that an executive

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1 associated with the Rochester plant,  
2 regardless of those losses, will get a KECP  
3 benefit if a division -- if his division or  
4 her division is entitled to a KECP?

5 A. And, again, the KECP metric is OBATAR or  
6 EBITDA. So the two --

7 Q. It's not plan-specific?

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8 A. It's a different number, correct.

9 Q. Okay. And now the short-term incentive  
10 plan that's going to apply to the salaried  
11 employees, is it also true that a salaried  
12 employee could obtain a benefit regardless of  
13 the fact that the plant that salaried employee  
14 is at or is associated with is losing money?

15 A. It is possible, yes.

16 Q. In connection with executive  
17 compensation, are there any arrangements by  
18 contract that provide any kind of retiree  
19 health insurance benefit to current executives  
20 other than the benefit that's available  
21 through the salaried employees' plans?

22 A. Not that I'm aware, no.

23 Q. Are there any currently retired  
24 executives who are receiving any kind of  
25 benefit in connection with health insurance

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1 other than a benefit that's available through  
2 the salaried plan?

3 A. No.

4 MS. MEHLSACK: I have no further  
5 questions.

6 THE WITNESS: Thank you.

7 MR. KURTZ: Glenn Kurtz for the ad  
8 hoc committee of equity holders. Your Honor,  
9 may I proceed?

10 THE COURT: Yes.

11 CROSS EXAMINATION BY

12 MR. KURTZ:

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13 Q. Mr. Weber, I just have questions about  
14 one paragraph of your declaration which is  
15 Exhibit 14. Do you have that in front of you?

16 A. Yes.

17 Q. Can you turn to paragraph 13?

18 A. Yes.

19 Q. All right. You see where you testify  
20 that GM and Delphi recognize that Delphi might  
21 be unable to meet its future capital  
22 requirements?

23 A. I see that.

24 Q. What did you mean by capital  
25 requirements?

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1 A. Capital to do the normal things you do  
2 with capital in the business.

3 Q. To operate the business?

4 A. Sure.

5 Q. And what's the basis for your testimony  
6 that GM was aware that Delphi might be unable  
7 to meet its future capital requirements to  
8 operate its business?

9 A. I believe it was a possibility  
10 identified. Not necessarily a probability  
11 identified.

12 Q. You testified that GM recognized the fact  
13 that Delphi might be unable to meet its future  
14 capital requirements, correct?

15 A. Yes.

16 Q. And how do you know that?

17 A. I don't know that, specifically.

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18 Q. Did anyone from GM ever tell you that  
19 they have recognized that Delphi might be  
20 unable to meet its future capital  
21 requirements?

22 A. Did anyone from General Motors tell me?

23 Q. Correct.

24 A. Is that what you said?

25 Q. Yes.

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1 A. No. No one told me from General Motors.

2 Q. Nobody. So can you tell me what the  
3 basis was for the testimony that you have  
4 included in paragraph 13 of your declaration?

5 A. Again, I think it was a possibility. Not  
6 necessarily a probability.

7 Q. Okay. But what was the basis for your  
8 testimony about the possibility that -- well,  
9 what was the basis for your testimony that GM  
10 was aware of the possibility that Delphi might  
11 not be able to meet its future capital  
12 requirements?

13 A. I think this is an S1 lift.

14 Q. Based on --

15 A. A lift from the S1.

16 Q. Okay.

17 MR. KURTZ: No further questions.

18 THE COURT: Okay. Redirect?

19 REDIRECT EXAMINATION BY

20 MR. BUTLER:

21 Q. Mr. Weber, during your cross examination,  
22 you were asked about a line of questions

23 regarding competitiveness and the impact on  
24 customers. And you testified about customers  
25 caring about competitive labor rates, do you

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1 recall that testimony?

2 A. Yes, I do.

3 Q. Could you please turn to Exhibit 311?

4 A. I have it.

5 Q. Could you explain to the Court what this  
6 document is?

7 UNIDENTIFIED ATTORNEY: Your Honor,  
8 could we have a minute to get it out before  
9 the witness answers the question?

10 THE COURT: That's fine.

11 MR. SIMON: Your Honor, I do want to  
12 make it clear for the record that this was a  
13 document provided to at least UAW counsel and  
14 I believe all counsel, just last night.

15 THE COURT: Okay.

16 MR. BUTLER: It's a two page  
17 document and I only have a couple of  
18 questions. I don't think this was raised on  
19 cross examination, the issues.

20 THE COURT: I guess the first point  
21 is, you had gone over other documents and I  
22 guess there were no issues as to their  
23 admissibility. I don't know if this is  
24 covered by the same arrangement or not.

25 MR. BUTLER: Your Honor, we're going

1 to deal with it -- the final admissibility of  
2 all documents at the close of the case.

3 THE COURT: Okay.

4 MR. BUTLER: We have some objections  
5 to some documents. We've got a meet and  
6 confer as to the balance.

7 THE COURT: All right.

8 BY MR. BUTLER:

9 A. I do have it.

10 Q. Mr. Weber, can you explain briefly to the  
11 Court, in your own words, what this document  
12 is?

13 A. This looks like a document from General  
14 Motors that requires us to provide information  
15 to support a bid for a piece of work we might  
16 be bidding on with General Motors.

17 MR. KENNEDY: Objection, Your Honor,  
18 there's no foundation. The witness is  
19 indicating what the document looks like.

20 THE COURT: You should lay a  
21 foundation.

22 MR. BUTLER: Okay.

23 Q. Mr. Weber, are you aware as to whether or  
24 not Delphi bids its jobs to customers like  
25 General Motors Corporation?

1 A. Yes, I am.

2 Q. When it bids its job, does General Motors  
3 require to complete any documentation in

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4 connection with that bid?

5 A. Yes.

6 Q. In connection with completing its bidding  
7 with General Motors, is it required to submit  
8 cost analysis relating to its bid?

9 A. Yes.

10 Q. Does General Motors provide Delphi with  
11 forms on how to complete those bids?

12 A. Yes.

13 Q. Is Exhibit 311 one of those forms?

14 A. Yes, it is.

15 Q. Now looking to Exhibit 311, does General  
16 Motors require Delphi to specifically call out  
17 the labor costs associated with the particular  
18 piece of work product being bid?

19 A. Yes, it does.

20 Q. And where on Exhibit 311 is that  
21 instruction given?

22 A. It's on the bottom half of the page,  
23 roughly right, it says labor and burden. It  
24 has description of the operation, the hourly  
25 labor rates, standard hours, labor costs,

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1 operators and so on.

2 Q. And the second page of 311 is the  
3 spreadsheet?

4 A. Yes.

5 Q. Where you have to lay out all of the  
6 actual labor costs in the plant associated  
7 with the work that's being bid?

8 A. That is correct.

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9 Q. In your cross examination, Mr. Kennedy  
10 asked you about mirror labor agreements, and  
11 implied that the IUE had a mirror agreement.  
12 Does the IUE have a mirror agreement with  
13 Delphi?

14 THE COURT: You're saying mirror,  
15 right?

16 MR. BUTLER: Mirror, a mirror.

17 Sorry.

18 THE COURT: Okay.

19 A. I do not believe so.

20 Q. The only mirror agreement is with the  
21 UAW, isn't that correct?

22 A. I believe so.

23 Q. During your cross examination, you were  
24 asked about whether any compensation had been  
25 reduced since 1999, and Mr. Kennedy delimited

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1 your answer to base wages?  
2 A. That's correct.  
3 Q. If you took into account total  
4 compensation would your answer have been the  
5 same?  
6 A. No.  
7 Q. Would you tell the Court, in your own  
8 words, what your answer would have been had  
9 Mr. Kennedy asked you about total compensation  
10 rather than just a single element of  
11 compensation?  
12 A. There are various aspects of our benefit  
13 program which are changing and which have been

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14 reduced over time, including healthcare,  
15 higher co-pays for healthcare and culminating  
16 in the decision to have no post-retiree  
17 healthcare starting in '07.

18 Q. So during the period from 1999 through  
19 2007, has salaried total compensation  
20 increased or decreased?

21 A. I'd say it's, roughly right, gone down.

22 Q. Since the filing of these Chapter 11  
23 cases, or in 2000 --

24 MR. BUTLER: Strike, withdrawn.

25 Q. In 2005, since beginning of 2005, have

72

1 any executives at Delphi foregone any  
2 compensation?

3 A. Yes.

4 Q. And were those senior executives?

5 A. Yes.

6 Q. And approximately how much of their  
7 compensation did they forego?

8 A. The CEO reduces pay from a million-five  
9 to one dollar. The president reduces pay by  
10 twenty percent. And we have reduced our pay  
11 voluntarily by ten percent.

12 Q. During your cross examination, Mr. Levine  
13 asked you a series of questions regarding the  
14 rate by which salaried workers and hourly  
15 workers were being reduced in the United  
16 States under the transformation plan. And  
17 that line of question concluded, in his  
18 observation, that there would be more salaried

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19 workers than hourly workers at the end of the  
20 transformation plan. Do you recall that line  
21 of questioning?

22 A. Yes, I do.

23 Q. Would you explain to the Court, in your  
24 own words, why it would be that at the end of  
25 the transformation plan there would be so many

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1 salaried workers in United States?

2 A. Because first of all, the corporate  
3 headquarters for the companies is in the U.S.  
4 So those people are going to be required for  
5 operations around the world. And secondly,  
6 even larger numbers of individuals are in the  
7 U.S. because they engineer the products for  
8 the various divisions around the world.

9 Q. How many employees does Delphi have  
10 today, Mr. Weber?

11 A. On hundred and eighty thousand.

12 Q. And how many of those employees reside in  
13 the United States, all in?

14 A. Fifty. Fifty thousand.

15 Q. So approximately a 135 thousand employees  
16 reside outside the United States?

17 A. Roughly right, yes.

18 Q. And these salaried employees are involved  
19 in management of those employees, is that  
20 correct?

21 A. Yes, they are.

22 THE COURT: I'm sorry. Does the 180  
23 thousand include management or is that just --

24 THE WITNESS: It's everybody.

25 THE COURT: That's everybody?

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1 THE WITNESS: Yes.

2 Q. In your cross examination, you were asked  
3 a line of questions, also by Mr. Levine, that  
4 went into the fact that the transformation  
5 plan had not been adjusted for the salaried  
6 incentive payments going forward even though  
7 the number of salaried workers is going to go  
8 down. Do you recall that, Mr. Weber?

9 A. Yes, I do.

10 Q. Is it Delphi's intention that Delphi is  
11 going to increase its salaried incentive  
12 design to capture all of that additional money  
13 for a lower group of people per capita?

14 A. No, sir.

15 Q. What is Delphi's intention?

16 A. The salaried incentive plan design over  
17 the period will be whatever's competitive in  
18 the market place. However, we will not hold  
19 the dollars constant if we have fewer people  
20 to have higher paid people. So whatever the  
21 market competitiveness is, is what it should  
22 be, in our judgment.

23 Q. So do you expect that the gross number of  
24 dollars that will be spent on incentive  
25 compensation under a KECP type program in the

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1 future, if such program is adopted would in  
2 fact be less or more?

3 MR. LEVINE: Objection, Your Honor.

4 We've been pretty tolerant. That's a fairly  
5 leading question.

6 THE COURT: Sustained.

7 MR. LEVINE: Leading question  
8 objection.

9 Q. Do you have any views regarding the  
10 future design of KECP programs, Mr. Weber?

11 A. The designs will be competitive and with  
12 fewer people it should be fewer dollars.

13 Q. I have no further questions, thank you  
14 very much.

15 A. Thank you.

16 MR. KENNEDY: Tom Kennedy, IUE-CWA,  
17 Your Honor.

18 RECROSS EXAMINATION BY

19 MR. KENNEDY:

20 Q. The lack of a mirror agreement, that you  
21 identified a minute ago, with the IUE means  
22 that in the 2003 negotiations between IUE-CWA  
23 and Delphi, Delphi had a free hand to reach  
24 whatever labor agreements it thought was  
25 appropriate, correct?

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1 A. Yes.

2 Q. Mr. Butler was asking you some questions  
3 concerning total compensation paid to salaried  
4 to managerial employees?

5 A. Yes.

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6 Q. Now, as I understand your testimony, from  
7 1999 until now, total compensation paid to a  
8 typical or average salaried or managerial  
9 employee has roughly gone down. Is that your  
10 testimony?

11 A. Yes.

12 Q. By what percentage has their compensation  
13 gone down from 1999 through the present?

14 A. I don't know the percentage.

15 Q. Well, give me an order of magnitude. Is  
16 it less than five percent?

17 A. It's a hard calculation to make. And I  
18 can explain why.

19 Q. Well, what are the components of the  
20 total compensation package that from 1999  
21 until now have gone down for Delphi's salaried  
22 and executive personnel?

23 A. An executive program includes base pay,  
24 its called an AIP or an annual incentive  
25 program, which is the bonus program. It

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1 includes a long term incentive program which  
2 typically is stock options and restricted  
3 stock. For nonexecutives -- and then it  
4 includes a myriad of benefits like healthcare,  
5 dental, vision, life insurance and so on. For  
6 the classified workforce it would include the  
7 base pay, roughly any one center that we  
8 discussed, and all those benefits that are --  
9 that I described to you. In 1999, and in  
10 2000, for sure, the annual incentive paid out.

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11 It paid out in 2000, did not in '01, partial  
12 payment in '02, did not in '03, did not in  
13 '04, did not in '05. So that number is out of  
14 the calculations over that time because it was  
15 not paid. And it varies by individual and by  
16 level so its going to be a very hard  
17 calculation to even guesstimate for you.

18 Q. Well, would it be fair to say that the  
19 largest single element of executive and  
20 managerial and salaried compensation that has  
21 been reduced since 1999, has been the at-risk  
22 portion of their pay under either the AIP or  
23 the LTIP programs?

24 A. Yes.

25 Q. And isn't it the company's position that

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1 in the years 2001, 2003, 2004 and 2005 Delphi  
2 lost billions of dollars?

3 A. I don't know that we lost billions of  
4 dollars in 2001.

5 Q. Well, I didn't say 2001. If I did, I  
6 didn't mean to. The years in which the  
7 incentive programs have not paid out, have not  
8 paid out because the performance of the  
9 company has been extremely negative in terms  
10 of money production or loss, right?

11 A. I believe in 2001 if the proponents of  
12 the company was below target but not  
13 necessarily negative.

14 Q. Have you completed your answer?

15 A. Yeah.

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16 Q. Okay. If the company had met its  
17 performance targets from the year 1999 through  
18 2006, would you agree with me that executive  
19 compensation would not have gone down but  
20 would rather have increased?

21 A. No, it would have gone down.

22 Q. Okay. And why would it have gone down?

23 A. Because if it met its targets in those  
24 other years, the payout would have been less  
25 than in '99 and 2000 when we exceeded our

79

1 targets.

2 Q. If I look puzzled, it's because I am. If  
3 the company had met its performance targets in  
4 '02, '03, '04 and '05 --

5 A. Yes.

6 Q. -- executive compensation would have gone  
7 down in those years? Is that what you  
8 testified?

9 A. It would have been -- actually, what I  
10 think would have been -- it would have gone  
11 down relative to '99 and '00.

12 Q. No. If I asked that question let me  
13 withdraw it, and let me ask you this question.

14 A. All right.

15 Q. Isn't it a fact that if the company had  
16 met its performance targets in '02, '03, '04  
17 and '05, executive compensation would have  
18 risen in those years?

19 A. It's possible.

20 Q. Possible?

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21 A. Yeah, it's very individual, it's  
22 possible.

23 Q. Very individual?

24 A. Yes.

25 Q. So it could have been that the company

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1 made lots of money in each one of those years  
2 and the salaried and executive workforce would  
3 have experienced decreases in their  
4 compensation? Does that strike you as very  
5 likely?

6 A. The only reason I'm thinking about the  
7 answer like I am, that if we met our  
8 targets -- met our targets, the only way it  
9 would go up is if we changed the targets to be  
10 higher.

11 Q. Well, wouldn't that have been a rational  
12 management reaction to continue to inspire and  
13 incentivize people to make the targets higher  
14 each year?

15 A. It would all depend on what the market  
16 study was for the targets on a given year.

17 Q. So that Delphi could have a situation in  
18 which it was meeting its performance targets  
19 but under a market driven analysis to be  
20 competitive, it reduced its targets for its  
21 managers' financial performance?

22 A. It could.

23 Q. Okay. Now you identified as a area in  
24 which executive and managerial compensation  
25 had gone down in health care, the issue of

1 post-retirement healthcare, correct?

2 A. Yes.

3 Q. Would you agree with me that that is the  
4 single most important area in which executive  
5 and salaried compensation and healthcare has  
6 gone down?

7 A. Since?

8 Q. Since 1999?

9 A. Yes.

10 Q. Okay. Now, isn't it true that, in fact,  
11 Delphi continues to provide retirement  
12 healthcare through age sixty-five for its  
13 salaried and managerial workforce?

14 A. Yes.

15 Q. And there are no plans to change that,  
16 correct?

17 A. The providing of the healthcare or the  
18 amount of coverage?

19 Q. The providing healthcare until age sixty-  
20 five?

21 A. That's correct.

22 Q. Now I know this is difficult, Mark, and  
23 if you can't answer it just let me know, but  
24 can you compare the relative percentage  
25 decreases in compensation that Delphi is

1 asking its hourly workforce to accept as part

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2 of the competitive benchmark scenario versus  
3 whatever percentage decline you think salaried  
4 to management has had from 1999 to now?

5 A. No, I can't do that.

6 Q. Well, can you look at the one piece of  
7 the equation? What is the percentage  
8 reduction in compensation Delphi is asking its  
9 hourly workforce to accept under the  
10 competitive benchmark scenario?

11 A. Sixty percent.

12 Q. Is there any possibility, just talking  
13 between us, that executive compensation has  
14 declined by sixty percent from 1999 until now?

15 A. Yes, there is.

16 Q. Really?

17 A. Oh, yes.

18 Q. Have you been that unfortunate feller?

19 A. I'm amongst them, yes.

20 Q. Okay. And that's because of the foregone  
21 compensation that Mr. Butler asked you about  
22 at the end of the redirect?

23 A. No.

24 Q. Okay. Is that function of stock  
25 opportunities and options and so forth?

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1 A. Yeah, it's a function of the annual  
2 incentive piece of the compensation not paying  
3 out, and the stock options not materializing,  
4 and then you have the stock being virtually  
5 valueless.

6 Q. Okay.

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7 A. Yes.

8 Q. And, again, those are all a function of  
9 the financial performance of the company,  
10 correct?

11 A. According to the market

12 Q. Or the market.

13 A. Yes.

14 Q. In any event, those are aspects related  
15 to what you called the at-risk elements of  
16 executive compensation?

17 A. Yes, sir.

18 Q. You pointed out, and I don't believe  
19 you're the first, that Mr. Miller has reduced  
20 his wages, I guess we'll call them, from 1.5  
21 million per year down to one dollar?

22 A. Yes.

23 Q. Now, Mr. Miller got a three million  
24 dollar, just about three million dollar  
25 signing bonus in July of 2005, correct?

84

1 A. Correct.

2 Q. How much of that has he given back as  
3 part of this program of reducing compensation?

4 A. None that I know.

5 Q. And am I correct that in either '04 or  
6 '05 the president of Delphi received a salary  
7 increase?

8 A. We didn't have a president in '04, so  
9 possibly in '05 I'm sure he -- when he was  
10 promoted to president, sure.

11 Q. Okay.

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12 A. Yes.

13 Q. Because sometime at the end of '05 he  
14 took a twenty percent decrease, correct?

15 A. Correct?

16 Q. It's what you testified to?

17 A. Yes.

18 Q. How did that twenty percent decrease  
19 stack up against the increase he had gotten  
20 earlier that year? Wasn't it about the same?

21 A. I'm searching from the memory, those  
22 numbers. I think it's roughly right.

23 Q. Roughly right?

24 A. Yeah.

25 Q. That this twenty percent decrease was

85

1 essentially moving him back to where he was  
2 before he got the increase in '05?

3 A. With different responsibilities.

4 Q. Well.

5 A. Well.

6 Q. And isn't it also true that the other  
7 executives who had to forego wage increases,  
8 including yourself, I guess, had gotten  
9 increases prior to that act of forbearance?

10 A. In '04?

11 Q. Yeah.

12 A. I believe that's right.

13 Q. And, again, I'm not asking you for the  
14 amounts, but would it be roughly true that the  
15 amount that was foregone in '05 was equivalent  
16 to the increase that had been given in '04?

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17 A. I don't know all the numbers, I only know  
18 mine.

19 Q. Well, can you tell us again, I'm not  
20 asking you the number for purposes of privacy,  
21 but would the increase that you gave up be  
22 about the amount that you got?

23 A. It was roughly twice as much as my  
24 increase.

25 MR. KENNEDY: Thank you. No other

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1 questions.

2 RECROSS EXAMINATION BY

3 MR. PETERSON:

4 Q. Mr. Weber, Exhibit 311, you testified  
5 about the GM bid document?

6 A. Yes.

7 Q. This document indicates that General  
8 Motors requires Delphi to describe its hourly  
9 labor rates, correct?

10 A. Correct.

11 Q. You were here yesterday when Mr. Sheehan  
12 was testifying, correct?

13 A. Yes, I was.

14 Q. And he testified that General Motors  
15 estimates that it pays a 2 billion dollar  
16 annual wage premium to reflect the fact that  
17 Delphi's hourly wages are high, correct?

18 A. That's the number he said.

19 Q. All right. So, when General Motors looks  
20 at the -- Delphi's answer to item 10, their  
21 hourly labor rate, presumably that forms the

22 basis for this wage subsidy in some manner,  
23 isn't that a fair statement? GM takes a look  
24 at this and says, oh, this is Delphi, it's  
25 paying higher wages, we are going to pay a

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1 wage penalty, is that a fair statement?  
2 A. I can't link those two together and  
3 conclude that's the rationale for GM. I don't  
4 know how to describe their rationale.

5 Q. Are you saying they don't pay a wage  
6 penalty to reflect Delphi's hourly -- higher  
7 hourly wage rates?

8 A. I'm saying they say they pay a wage  
9 penalty. I don't know how they -- I'm not  
10 sure I can link it as carefully as you have,  
11 one to the other.

12 Q. In other words, you don't know that it's  
13 this form that does it, but General Motors  
14 does know that Delphi pays hourly wages of a  
15 certain level, correct?

16 A. That's correct, they do know that.

17 Q. And General Motors says that it pays two  
18 billion dollars a year in -- more than it  
19 would otherwise pay to Delphi as a result of  
20 the high wages, correct?

21 A. Yes.

22 MR. PETERSON: Thank you.

23 THE COURT: Well, can I -- let me  
24 ask you a little bit more about Exhibit 311.

25 THE WITNESS: Okay.

1                   THE COURT: To your knowledge, and  
2 you referred to bid sheets generally, with  
3 other customers too, besides GM?

4                   THE WITNESS: I believe they are,  
5 yes.

6                   THE COURT: Are -- is a function of  
7 the detail of this information to substantiate  
8 some form of, like, cost plus contract?

9                   THE WITNESS: Typically, no. The  
10 function is for the OE to try to determine  
11 what their cost base might be. And if, in  
12 fact, they see areas what would be high versus  
13 market, it would try to redirect you to think  
14 about that area of your bid sheet and to work  
15 on that to lower it to market rates. It could  
16 be material, it could be engineering cost, it  
17 could be labor cost.

18                  THE COURT: But if the overall price  
19 that you're bidding at is at market, why do  
20 they care about the elements of it? If they  
21 can buy, you know, catalytic converters from  
22 Delphi at ten dollars less per converter than  
23 a competitor, why do they care what Delphi's  
24 paying its unions?

25                  THE WITNESS: The -- there's a, sort

1 of, a precept that many OEs think. The only  
2 thing worse than a bad supplier is a new  
3 supplier, because that brings risk and

4 uncertainty. And so they would always prefer  
5 to keep the supplier that they happen to have,  
6 because they have a relationship and they  
7 understand each other's business. And if they  
8 see a bid that might be out of line, they  
9 would prefer to keep the supplier, but to get  
10 your cost "back in line." That's a very  
11 strong rationale for why they want to look at  
12 this kind of data.

13 THE COURT: Okay. So, to your  
14 knowledge they're not really tied to some --  
15 the contracts were not normally cost plus or  
16 something like that?

17 THE WITNESS: No, they are not.

18 THE COURT: All right. Mr. Kennedy  
19 asked you some questions about a particular  
20 plant in Ohio, do you remember that?

21 THE WITNESS: Portland.

22 THE COURT: Okay. Now, under  
23 Delphi's transformation plan in the U.S. its  
24 limited -- eliminating what, twenty-one of the  
25 twenty-seven plants?

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1 THE WITNESS: That's roughly right,  
2 yeah.

3 THE COURT: The proposal, at least,  
4 is all read to the UAW and the IUE, was on a  
5 national basis, correct?

6 THE WITNESS: The wage rate or the  
7 plants?

8 THE COURT: The wage rate.

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9 THE WITNESS: Yes.

10 THE COURT: What is to keep Delphi,  
11 particularly given the substantial  
12 transformation going down from twenty-seven to  
13 twenty-four plants, from negotiating wages on  
14 a plant-by-plant basis?

15 THE WITNESS: The -- wow --  
16 technically, we do. Although, I believe in  
17 the UAW plants they have to be approved by the  
18 national parties. And they exercise control  
19 over those. So it's -- it's a technical  
20 issue, but in truth and in fact, I believe,  
21 that the UAW International negotiates the wage  
22 rates by controlling the wage rates in the  
23 plants through the approval process. With the  
24 other unions, we do have plant-by-plant  
25 negotiations on wage rates.

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1 THE COURT: If the unions, in light  
2 of the dramatic changes proposed by Delphi in  
3 terms of the plant footprint, are prepared to  
4 negotiate on a plant-by-plant basis to make  
5 Delphi more competitive with respect to the  
6 particular plants, is Delphi prepared to do  
7 that?

8 THE WITNESS: Sure.

9 THE COURT: Okay. Okay, thanks.

10 MR. PETERSON: Your Honor, can I ask  
11 a follow-up question based on your questions?

12 THE COURT: Yes.

13 Q. Mr. Weber, I am not a UAW negotiator, but

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14 I want to ask you in response to the Judge's  
15 question, if there were to be plant-by-plant  
16 negotiations, wouldn't there first have to be  
17 an understanding of what plants were going to  
18 be closed?

19 A. Yes.

20 Q. And what ones were going to remain open?

21 A. Yes.

22 MR. PETERSON: No further questions.

23 MR. KENNEDY: Just one question,  
24 Your Honor.

25 RECROSS EXAMINATION BY

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1 MR. KENNEDY:

2 Q. I think you've testified to this, but to  
3 make sure the record is clear, the IUE-CWA  
4 does negotiate its wages plant-by-plant,  
5 correct?

6 A. That's what I said.

7 Q. And your proposal to the IUE, however, is  
8 to establish a single national and lower wage  
9 rate, isn't that also correct?

10 A. Yes.

11 Q. That's different than what the history  
12 has been between the parties?

13 A. Yes.

14 MR. KENNEDY: All right, no other  
15 questions.

16 MS. MEHLSACK: Your Honor, if I may,  
17 I just have one question.

18 RECROSS EXAMINATION BY

19 MS. MEHLSACK:

20 Q. If your aim is to achieve flexibility at  
21 the plant level and you currently negotiate,  
22 am I right, the stationary engineers'  
23 contracts plant-by-plant, why has Delphi  
24 proposed, as of late yesterday afternoon, that  
25 the stationary engineers accept pattern

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1 treatment so that they will be replicating the  
2 UAW contract at a national level? Can you  
3 explain that?

4 A. Because, I believe, we think that roughly  
5 right there's a market rate for that skill set  
6 and that's roughly right the rate for the  
7 skill set.

8 Q. And do you know what the market rate for  
9 the skill set for the stationary engineers is?

10 A. No, I do not.

11 Q. Are you aware that Dr. Wachter testified  
12 that he didn't even consider the stationary  
13 engineers either in the Delphi population or  
14 in the national population that he utilized to  
15 determine comparability at all?

16 MR. BUTLER: Objection. I'm not  
17 sure that's what Dr. Wachter testified to.

18 THE COURT: Are you aware of --

19 THE WITNESS: I don't know what he  
20 said about that issue.

21 MS. MEHLSACK: I have no further  
22 questions.

23 THE COURT: Okay. Anything else?

24 You can step down, sir.

25 MR. BUTLER: Your Honor, our next

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1 witness in support of the debtor's section  
2 1113, 1114 motion is Robert Gerling. Mr.  
3 Gerling is labor director, thermal interior  
4 division. And we are calling him for cross  
5 examination in connection with his declaration  
6 -- declarations, at Exhibits 20 and 280 which  
7 we move into evidence subject to cross  
8 examination.

9 MR. KENNEDY: Your Honor, the union  
10 cross examiners will be, first the IBEW IAM  
11 and secondly the IUOE.

12 THE COURT: Okay. Mr. Gerling would  
13 you raise your right hand, please?

14 (Witness sworn in.)

15 THE COURT: Oh, I'm sorry, Mr.  
16 Gerling, could you spell your name for the  
17 court reporter?

18 THE WITNESS: Robert, R-O-B-E-R-T.  
19 Gerling G-E-R-L-I-N-G.

20 THE REPORTER: Thank you.

21 THE COURT: Ms. Robbins.

22 CROSS EXAMINATION BY

23 MS. ROBBINS:

24 Q. Good morning, Mr. Gerling.

25 A. Good morning.

95

1 Q. Although I believe we've met --

2 A. Couple times.

3 Q. I'm Marianne Robbins representing the IAM  
4 IBEW for the purposes of the record. How many  
5 years have you been a negotiator?

6 A. Since about 1992, so about fourteen  
7 years.

8 Q. You recently received a request from the  
9 IAM IBEW for information concerning the  
10 collective bargaining agreements that were not  
11 part of the 1113 proceeding, is that right?

12 A. Is that the one on the Mountain View and  
13 Irvine and Landrum? Yes.

14 Q. That's right.

15 A. Yeah. Last night I received that.

16 Q. And you provided, in response, an e-mail  
17 to the IBEW and IAM, is that right?

18 A. I sent the request to Mr. McQuee asking  
19 for the information and Mr. McQuee later that  
20 evening e-mailed the information back to Mr.  
21 Middleton and Mr. Griffin.

22 Q. I think this is going to be marked --  
23 excuse me, I'm away from the mike.

24 THE COURT: Okay, do you all have a  
25 copy of this?

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1 MR. BUTLER: Yeah. We just got --  
2 we just received it. We have it, Your Honor.

3 THE COURT: Okay.

4 MR. BUTLER: We've been given it

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5 this morning at the beginning of things. It's  
6 marked at 370.

7 THE COURT: Is someone going to put  
8 this in the binder?

9 MS. ROBBINS: Yeah.

10 MR. BULTER: It will find its way  
11 into the books, Your Honor.

12 THE COURT: Okay. All right.

13 Q. I'm showing you what's been marked as  
14 Exhibit 317, can you identify that as the e-  
15 mail chain that discusses those two plants?

16 A. There's three sites, but --

17 Q. The three sites?

18 A. Yeah, but there is another subsequent e-  
19 mail from Mr. McQuee that's not attached to  
20 this.

21 Q. Okay. But you recognize this as an e-  
22 mail chain between yourself, Mr. McQuee and  
23 IBEW 663's general manager, Randy Middleton,  
24 is that right?

25 A. Yes. Yes, I do.

97

1 Q. And I'm going to direct your attention to  
2 the last statement on the first sheet, and it  
3 indicates that you knew that the Irvine and  
4 Landrum plants were either closed or in the  
5 process of being closed?

6 A. That's my understanding, yes.

7 Q. And that's why they were excluded from  
8 the bankruptcy process?

9 A. As far as I know, I think, because they

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10 were in the process of already being closed.

11 Q. And is that accurate?

12 A. To my knowledge, it's accurate.

13 Q. And you know that in terms of the

14 Milwaukee facility where the IAM and IBEW are

15 located, that has also been announced for

16 closure?

17 A. Yes, I do know that.

18 Q. But we're here today?

19 A. Yes, we are.

20 Q. I'm going to ask you to take a look at

21 Exhibit 140. It's in volume 6. Do you

22 recognize that as an information request you

23 received from IBEW local 663 on October 26th

24 of 2005? Just days -- about the time that the

25 initial proposal came out.

98

1 A. Yes, I do.

2 Q. And what, if anything, was your role in  
3 addressing this information request?

4 A. I took the information request and gave  
5 it to Mr. McQuee who was coordinating the  
6 information requests for all the unions and so  
7 that we could track that and make sure we got  
8 responses back. So, I made sure it got to Mr.

9 McQuee.

10 Q. And did you have any role in verifying  
11 whether or not there were responses to these  
12 questions?

13 A. Mr. McQuee would send out updates on a  
14 regular basis and I would track to see that

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15 the unions I was dealing with, their responses  
16 were coming back as accurately and as quickly  
17 as they could be.

18 Q. Can you confirm that, with respect to  
19 Exhibit 140, there was a reply to the first  
20 two questions but not to the other questions?

21 A. I can't verify whether the first two and  
22 the others weren't. I don't --

23 Q. You don't know?

24 A. I don't know.

25 Q. You did nothing to check whether the IBEW

99

1 and IAM were provided with the information  
2 that had already been provided to the UAW, IUE  
3 and USW?

4 A. I can't confirm what the USW got. I only  
5 had the Milwaukee piece.

6 Q. And you also don't know whether any  
7 information was provided to the IAM and IBEW  
8 as information flowed subsequently to October  
9 to the larger unions?

10 A. I wasn't involved with those discussions.

11 Q. Do you understand that if the IAM and  
12 IBEW did not receive the same information they  
13 were at a disadvantage at evaluating the  
14 employer's proposal?

15 A. Yes.

16 MR. JERMAN: Objection, Your Honor.  
17 That assumes that they did not get the same  
18 information when, in fact, all the information  
19 is on the virtual data room, to which they

20 have access.

21 THE COURT: Well, you can ask it as  
22 a hypothetical question. If, in fact, this  
23 information had not been provided, would that  
24 have, in your view, put the union at a  
25 disadvantage?

100

1 THE WITNESS: I guess I would answer  
2 the question that each group that looks at the  
3 proposal will look at it differently, based on  
4 their circumstances. So the information that  
5 they would request would be -- may be  
6 different. So that's, you know, there was a  
7 lot of questions asked to the IBEW, IAM did  
8 not ask as many questions as the other unions  
9 in total. So, it just depends on what  
10 information you want to whatever, perform  
11 whatever analysis upon the proposals you want  
12 to.

13 Q. Did you understand from Exhibit 140 --

14 A. Uh-huh.

15 Q. -- that the IAM and IBEW were asking for  
16 all of the information which the larger unions  
17 received?

18 A. That's what's written in the document,  
19 yes.

20 Q. But you have no information as to whether  
21 that was provided?

22 A. I know that all the requests made by the  
23 IBEW and IAM have been responded to, to my  
24 knowledge.

25 Q. But you can't point to a response to the

101

1 questions 3 through the end of 140?

2 A. I can't tell you what date they were  
3 responded to, but I know they were all  
4 responded to.

5 Q. There was a subsequent information  
6 request from the IBEW on October 31, 2005.  
7 It's Exhibit 198F. That's volume 9 if you  
8 need to get it in front of you, Mr. Gerling.

9 A. I have it now.

10 Q. Did you have any role in responding to  
11 this information request, although it was  
12 directed to Kevin Butler initially?

13 A. 198 is Randy Middleton's declaration.

14 Q. That's right. And there should be,  
15 attached to that, as Exhibit F --

16 A. Oh, okay. I didn't hear you say that,  
17 I'm sorry.

18 Q. Sorry.

19 THE COURT: Is that next to the  
20 last?

21 MS. ROBBINS: Next to the last, yes.  
22 Blue sheet.

23 THE WITNESS: Okay. I now have it  
24 here, would you ask your question again?

25 Q. Yes. And the question is did you have

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1 any role in arranging for the response to this

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2 information request?

3 A. I received a copy of it from Mr. Butler  
4 and I did the same thing. I sent it to Mr.  
5 McQuee to coordinate the information to go  
6 back to the IAM IBEW.

7 Q. And do you have any knowledge as to what  
8 extent there were responses to this request  
9 for information?

10 A. As far as I know, all our information  
11 requests, based on the tracking sheet that we  
12 use, have been answered -- have been replied  
13 to.

14 Q. But you yourself do not know what  
15 information was provided in response to the  
16 inquiries, is that right?

17 A. To the individual questions, I don't have  
18 detailed knowledge of, you know, what was the  
19 response to the individual request.

20 Q. Okay. Why don't you turn to Exhibit 141,  
21 and that's in volume 6.

22 A. Okay. I have it.

23 Q. Did you receive copy of this document  
24 that was in response to the union's initial  
25 information requests?

103

1 A. I'm not on the distribution, I can't  
2 confirm whether or not I got a copy of it or  
3 not.

4 Q. Okay. So even though you were the chief  
5 negotiator, with respect to the IAM and IBEW  
6 the company did not copy you with -- Delphi

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7 did not copy you with the responses to the  
8 information requests that were provided to the  
9 IAM and IBEW?

10 A. As we move forward on the process,  
11 subsequent ones were. I can't confirm whether  
12 this one was or not.

13 Q. Okay. Can you see, from this document,  
14 that only the first two questions asked by Mr.  
15 Riley in Exhibit 140 are responded to?

16 A. I've got to look at 140 again to answer  
17 your question.

18 Q. If you have the notebook with 141, all  
19 you have to do is flip one exhibit.

20 A. To 142, okay.

21 Q. It's 140 is Mr. Riley's request.

22 A. Oh, okay.

23 Q. And 141 is a response.

24 A. Okay.

25 Q. And can you confirm that there's only a

104

1 response to the first two of Mr. Riley's  
2 questions?

3 A. I believe you're correct.

4 Q. Okay. And item number 3 references --

5 A. Excuse me, on which one?

6 Q. Item number 3 on Exhibit 141, the  
7 response.

8 A. Uh-huh.

9 Q. References questions 6, 7 and 8 of the  
10 October 31st information request and the  
11 response indicates that that had to do with

12 salaries and bonuses, compensation of salaried  
13 employees.

14 A. Yeah, that's what it refers to.

15 Q. And essentially, the company's position  
16 there is that that's confidential information,  
17 it's not going to be provided, is that right?

18 A. It talks about individual employee's  
19 information is considered to be confidential.

20 That's what it states.

21 Q. And there's no substantive information  
22 that is provided?

23 A. No. It says in lieu of this personal  
24 information, we have attached copies of the  
25 most salary range table for classified

105

1 salaried employees. There's also a reference  
2 to senior corporate officer David being  
3 available.

4 Q. Unfortunately, the response to this  
5 document was put in the confidential booklet.  
6 So it gets a little more complicated in terms  
7 of being able to follow it. Let's see if we  
8 can find it. If you turn to Exhibit 143,  
9 which unfortunately is in confidential volume

10 1 --

11 MR. JERMAN: Objection, Your Honor.  
12 Characterization.

13 THE COURT: You're just saying  
14 unfortunately because we have to switch  
15 volumes, right?

16 MS. ROBBINS: Yeah. That's all I'm

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17 saying, Your Honor, is --

18 THE COURT: Okay. Just  
19 mechanically.

20 MS. ROBBINS: It's just  
21 mechanically.

22 THE COURT: All right. Fair enough.

23 Q. And when you get, Mr. Gerling, Exhibit  
24 143 in front of you, which is in confidential  
25 binder number 1.

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1 A. Okay.

2 Q. If you turn to the last page of Exhibit  
3 143, can you identify that as the wage  
4 structure that is referred to?

5 A. It's titled 2005 Salary Range Structure,  
6 you're correct.

7 Q. Okay. And if you look at this document  
8 by itself, which is what we have in front of  
9 us, it's impossible to tell anything about the  
10 compensation that is provided for a given  
11 skill set or responsibility level, isn't that  
12 right?

13 A. Well, I mean, I can make an inference  
14 from the data that a level two person  
15 compensated less has certain skill sets that  
16 aren't the same as a level nine person.

17 Q. But you have no idea, from this chart,  
18 whether someone is above market, below market  
19 or where they are, because you don't know  
20 where the skill sets are, they're not defined  
21 in this document, isn't that right?

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22 A. Although I'm not a compensation expert,  
23 this -- the midpoint typically refers to the  
24 market competitive rates for those ranges.

25 Q. Would you agree that if the IAM and IBEW

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1 wanted to test the assertion that was made by  
2 Mr. Weber, this document provides no  
3 information that would allow you to test  
4 whether, in fact, for any given skill set this  
5 was a market level rate?

6 A. I think you'd have to use this in  
7 conjunction with more questions. This, in and  
8 of itself, I don't think will answer all your  
9 questions. This is vital to answering your  
10 question.

11 Q. Do you have any idea why Delphi provided  
12 only this sheet without any of the additional  
13 information that would be needed to interpret  
14 this document?

15 A. That request was not made of me, so it's  
16 not fair for me to answer that question.

17 Q. And you did not check, in terms of what  
18 kind of response was being provided to the  
19 unions you were negotiating with, with respect  
20 to how their information requests were being  
21 responded to?

22 A. There were no follow-up questions to me,  
23 based on these data requests.

24 Q. And the company's basic position was,  
25 that's confidential, this is the information

1 we're providing.

2 A. Based on the previous exhibits we looked  
3 at, that was the statement.

4 Q. While we're on 143 for a moment, do you  
5 understand the union reiterated the same  
6 question on March 30th, with respect to  
7 salaried compensation --

8 MR. JERMAN: I'm sorry, which  
9 exhibit?

10 MS. ROBBINS: This is 143, the first  
11 page.

12 A. Which one of these e-mails?

13 Q. Item number 4, in the first e-mail.

14 A. Okay.

15 Q. Do you see that that is a response --  
16 actually, I think, Mr. Middleton's request is  
17 on the back. I'm sorry. E-mail chain, the  
18 lower one is the first one --

19 A. Sure.

20 Q. -- and his question number 4 is then  
21 responded to on the first page by Mr. McQuee,  
22 basically saying, again, it's confidential  
23 information and providing a copy of that wage  
24 schedule we just discussed.

25 A. The response to number 4 states, as he

1 communicated to you previously. That's right.

2 They're not --

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3 Q. So the union asked a question?

4 A. I'm sorry. The information, because of  
5 the confidential nature, that wasn't shared.

6 Q. So the IAM -- excuse me. The IBEW asked  
7 the question twice and the response they got  
8 twice was, it's confidential and one sheet of  
9 paper that you can't make sense of by itself,  
10 is that right?

11 MR. JERMAN: Objection, Your Honor.

12 THE COURT: You should rephrase the  
13 question.

14 MR. JERMAN: Your Honor, I'm  
15 objecting to that as assuming facts not in the  
16 record.

17 THE COURT: I sustain the objection.

18 MS. ROBBINS: I'll withdraw the  
19 question.

20 Q. Can you confirm, Mr. Gerling, that in  
21 response to the union asking the question  
22 twice, concerning salaried compensation, the  
23 union was informed that the information was  
24 confidential and received one sheet of paper  
25 only?

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1 A. Based on the information I have in front  
2 of me, it appears they asked twice. I don't  
3 know if there were other requests and other  
4 responses given, but based on the information  
5 I have here.

6 Q. I'm going to now address your attention  
7 to the meeting on -- that you had with the IAM

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8 and IBEW bargaining committees on October --  
9 in October of 2005.

10 A. Okay.

11 Q. You were aware, at that time, that Mr.  
12 Middleton was out of town, is that right?

13 A. When the meeting was -- when we scheduled  
14 the meeting, yes. I was informed he was on  
15 vacation.

16 Q. And you understood that he was the chief  
17 spokesperson for the IBEW?

18 A. I was informed that, yes. I'd never met  
19 Mr. Middleton at that point.

20 Q. Yeah. But you -- in -- do you know  
21 whether the IAM business agent was present or  
22 not, at that meeting?

23 A. There was a gentleman on the phone and I  
24 don't remember which one he was. And there  
25 was a gentleman there by the name of Bill

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1 Christianson who was not a plant person. So  
2 there was somebody from the international  
3 there for the IBEW.

4 Q. Uh-huh.

5 A. I think he might have been on the phone.

6 Q. And were you aware that he was not the  
7 regular business agent assigned to that unit?

8 A. He told us that, yes.

9 Q. Okay. And yet, at that meeting, you  
10 presented the company's proposal as of October  
11 2005 to the IAM and IBEW, is that right?

12 A. In separate meetings. Yes, I did.

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13 Q. And you did not say, at that meeting,  
14 that you wanted to sit down and negotiate  
15 concerning that proposal at that time, isn't  
16 that right?

17 A. I don't know that I said I didn't --  
18 wouldn't sit down and negotiate. What I  
19 believe I said is I gave them the information  
20 and they should review it and ask questions  
21 and then get back with me.

22 Q. Okay. And the response that you made,  
23 review this and get back to me, or review this  
24 and we'll talk about it later, rather than  
25 negotiating at that point in time, you

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1 understood to be appropriate because you had  
2 presented this without the chief negotiators  
3 being present?

4 A. Well, Mr. Middleton was not present, but  
5 the way I looked at it is I presented them  
6 quite a big or a large amount of information  
7 that they probably wouldn't be able to  
8 negotiate without further review.

9 Q. Okay. So you understood that that  
10 meeting was not a negotiating meeting, it was  
11 an information providing meeting?

12 A. Well, it was going to set the stage for  
13 future negotiations, however they occur.

14 Q. But in terms of that meeting, you  
15 understood it was not a negotiating meeting,  
16 it was to present information to the unions?

17 A. Well, they could certainly negotiate if

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18 they wanted to. I didn't think they were  
19 going to, to be honest with you.  
20 Q. And you knew that since you'd had the  
21 meeting without the chief negotiators present,  
22 it would not have been appropriate for you to  
23 engage in negotiations without giving them a  
24 chance to get their spokespeople there and  
25 informed?

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1 A. Well, I have --  
2 Q. Isn't that right?  
3 MR. BUTLER: Can he answer the  
4 question you first asked?  
5 A. I guess the quest -- is the question you  
6 asked about, is it appropriate for me to  
7 negotiate without their chief negotiator? I  
8 have bargained with folks when their chief  
9 negotiator has not been present. Now, that  
10 was my first meeting with the IBEW and Mr.  
11 Middleton was not present. I didn't think  
12 they were going to want to sit down and  
13 negotiate the terms because he wasn't there.  
14 Q. And for that reason you understood the  
15 meeting to be an information providing  
16 meeting, rather than a negotiating meeting?  
17 MR. BUTLER: Objection, asked and  
18 answered.  
19 THE COURT: All right. Sustained.  
20 Q. Now, in November of 2005 there was  
21 another proposal from the company, and will  
22 you agree with me that you did not go to

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23 Milwaukee and have a meeting with the IAM or

24 with the IBEW concerning that proposal?

25 A. I only met with Mr. Middleton.

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1 Q. Okay.

2 A. And we met in Detroit so I did not go to  
3 Milwaukee, you're correct.

4 Q. Okay. And so any implication in your  
5 declaration that you came to Milwaukee or met  
6 with the committees would be an error?

7 A. I corrected that statement in my  
8 supplemental declaration, so if it's stated,  
9 it was not correct. That's why I corrected  
10 it. So I didn't go to Milwaukee in November,  
11 if that's what you're asking.

12 Q. That's what I'm asking.

13 A. No, I didn't.

14 Q. And you didn't meet with the committees  
15 in November of 2005, you only met with Mr.  
16 Middleton in Detroit?

17 A. He was in town, and that's correct.

18 Q. And at that meeting you indicated that  
19 you had -- that Delphi would be meeting with  
20 the larger unions first?

21 A. Yeah. It is our traditional bargaining,  
22 has been, we've done the UAW, IUE and then,  
23 kind of, through the process and then got down  
24 to the smaller groups, yes.

25 Q. And you received a letter from an

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1 attorney in our office, Kim Hall, confirming  
2 that you were -- that the Delphi plan to meet  
3 with the larger unions first, isn't that  
4 right?

5 A. I received a letter from Mr. Hall and I  
6 have -- I don't have it in front of me, but I  
7 did receive it and I did attempt to call Mr.  
8 Hall back, who never returned my phone call.

9 Q. This would be volume 9, again, 189  
10 Exhibit B, I think. Did I say something else?

11 MS. ROBBINS: I'm inverting my  
12 numbers, Your Honor.

13 Q. Let's try 198. And, unfortunately, that  
14 means a different volume. I apologize. But  
15 not confidential. I lost my place. Okay.  
16 Mr. Gerling, do you now have that in front of  
17 you?

18 A. Yes, I do.

19 Q. And in the first paragraph, Mr. Hall --

20 A. Wait. I have Randy's declaration.

21 Q. Okay.

22 A. Is it attached to it somewhere?

23 Q. Exhibit B.

24 A. B? Okay. Yeah, I got it.

25 Q. And Mr. Hall wrote to you indicating that

1 you had -- that we understood that Delphi does  
2 not intend to bargain with the IAM and IBEW in  
3 this matter until Delphi had already met with  
4 its larger unions, example IUE and UAW, is

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5 that right?

6 A. That's what his letter says.

7 Q. And he asked that if we were mistaken in  
8 this regard, or if it changes, that you would  
9 let us know.

10 A. And I called Mr. Hall the day I received  
11 the letter, who never returned my phone call.

12 Q. Mr. Gerling, you're an experienced  
13 negotiator, are you not?

14 A. Yes.

15 Q. And generally, when you receive a written  
16 statement, and you're asked to correct the  
17 statement if it's wrong or if it changes,  
18 isn't it your practice to respond in writing?

19 A. We respond all sorts of ways. I did not  
20 respond to this letter in writing. I did call  
21 Mr. Hall.

22 Q. And, basically, what he was saying was  
23 consistent with pattern bargaining, isn't that  
24 right?

25 A. Yes, because that's what Mr. Middleton

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1 and I spoke about in Detroit. We were going  
2 to do some pattern -- we were going to follow  
3 the pattern.

4 Q. So, the statement wasn't inaccurate.

5 A. No. No, that's what Mr. Middleton and I  
6 talked about. We were going to see what the  
7 other unions did.

8 Q. Between the November 16th meeting with  
9 Mr. Middleton and March of 2006, you did not

10 contact the IAM and IBEW to set up negotiating  
11 meetings, is that right?

12 A. I can't recall any specific meetings that  
13 I set up.

14 Q. And you were not surprised that you did  
15 not receive contacts from them, because you  
16 were engaged in pattern bargaining?

17 A. That was the approach we were taking,  
18 yeah.

19 Q. Now, on March 30, 2006, initially you  
20 were going to come to Milwaukee but then later  
21 you participated, through conference call, in  
22 a presentation of a new proposal to the IAM  
23 and IBEW?

24 A. I believe -- I don't remember the exact  
25 date, but it's the right time frame,

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1 absolutely.

2 Q. And basically, the main thing that you  
3 talked about in that conference call was the  
4 UAW attrition package, isn't that right?

5 A. We talked about the attrition package and  
6 the fact that we would be offering something  
7 similar to IAM IBEW.

8 Q. And in the course of that call Mr.  
9 Middleton and Mr. Griffin asked you when you'd  
10 be available to bargain?

11 A. I believe they did.

12 Q. And you said you'd get back to them?

13 A. Yes.

14 Q. But the next thing that happened was the

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15 company filed the 1113 petition?

16 A. I believe in the sequence of events,  
17 that's correct.

18 Q. Before you ever got back to them?

19 A. I believe that's correct.

20 Q. Were you surprised that the motion was  
21 filed against the IAM and IBEW?

22 A. I guess I don't know what you mean by  
23 surprised.

24 Q. Well, did you understand that the 1113  
25 was going to be focused on the unions with

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1 which the company had negotiated thus far?

2 A. I'm not -- I'm not following your train  
3 of thought here. Am I surprised that the  
4 motions to do 1113 and 14 with the IAM and  
5 IBEW were filed?

6 Q. Uh-huh. At the time they were?

7 A. No, because they were all filed at the  
8 same time, I believe.

9 Q. Now, you received -- did you receive  
10 notice of an e-mail from an attorney in our  
11 office, Joel Hartley, on or about April 12,  
12 2006?

13 A. I don't know.

14 Q. Volume 9, Exhibit 198, Exhibit E.

15 A. Is it this one? I've got 198. I've  
16 not -- until right now, I've never seen this  
17 e-mail.

18 Q. Okay. Were you informed -- if you look  
19 at the second paragraph from the bottom, on

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20 the first page of Exhibit E, were you  
21 contacted on or about -- excuse me.

22 MS. ROBBINS: Withdraw the question.

23 Q. If you look -- I'm sorry. Exhibit 145,  
24 volume 6, did you receive a copy of that  
25 letter?

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1 A. I don't see that I -- I don't recall ever  
2 seeing this before.

3 Q. The next to the last paragraph indicates  
4 that you will be contacting the IAM and IBEW.  
5 Does that refresh your recollection at all?

6 A. Which paragraph?

7 Q. The next to the last paragraph. It says  
8 Mr. --

9 A. Oh, okay.

10 Q. -- Gerling will contact your clients  
11 immediately.

12 A. Uh-huh. We had a meeting in Milwaukee  
13 the following week.

14 Q. Okay.

15 A. I don't remember when I contacted them,  
16 but I did contact them.

17 Q. Your declaration, sir, says that it was  
18 on April 13th, which is one day after your  
19 counsel indicated that you would contact the  
20 unions?

21 A. That could be correct. I'm --

22 Q. And were you informed --

23 A. -- I don't remember the date I contacted  
24 them.

25 Q. -- yeah. Were you informed that Ms.

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1 Hartley had inquired about why there had not  
2 been a meeting set up? And that you were to  
3 contact the unions as per your counsel's  
4 instruction?

5 A. I don't recall that conversation at all,  
6 to be honest with you.

7 Q. In any case, you contacted Mr. Middleton  
8 on April 13th, and he said he would be  
9 available to meet on the 14th and 15th and the  
10 next week, is that right?

11 A. Could be. I don't recall his exact  
12 comments but it's -- he could have said that.

13 Q. And you indicated to him that you would  
14 first be available on the 20th and 21st. And  
15 the parties met on those dates?

16 A. That's correct.

17 Q. And on the 20th, the first day that you  
18 had met in person with Mr. Middleton and Mr.  
19 Griffin and their committees, they provided  
20 you with a counter-proposal?

21 A. At the end of the day, they did.

22 Q. And on the 21st you asked some questions  
23 about that counterproposal?

24 A. Yes, I did.

25 Q. And then you indicated to them that you'd

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1 be providing them with an attrition package?

2 A. Yeah.

3 Q. And that you could not give them new  
4 dates for bargaining?

5 A. I told them I would get back with them on  
6 dates. So yeah, at the end of the meeting I  
7 didn't -- we didn't have another meeting set  
8 up, that's correct.

9 Q. And they asked you about that, but you'd  
10 said you'd contact Mr. Middleton on Monday or  
11 Tuesday of the following week?

12 A. Uh-huh.

13 Q. Is that right?

14 A. I believe that's correct.

15 Q. But you didn't call Mr. Middleton on  
16 Monday or Tuesday, did you?

17 A. I think he called me Wednesday, so you're  
18 correct.

19 Q. Later in the week he called you, and you  
20 indicated that you were not ready to meet?

21 A. Because we did not have the attrition  
22 package ready to present.

23 Q. You indicated to him that there would  
24 also be a counterproposal to the union's  
25 counterproposal, but you also didn't have that

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1 ready?

2 A. At the time I did not have it ready.

3 Q. And lo and behold, when we started this  
4 hearing on May 9, 2006, you still did not have  
5 the attrition package or the counterproposal

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6 ready, isn't that right?

7 MR. JERMAN: Objection, Your Honor.

8 Counsel is aware that the company, through me,  
9 made offer to her prior to that date.

10 MR. ROBBINS: We'll get there in a  
11 minute.

12 MR. SIMON: Yeah, that's not an  
13 objection, that's testimony.

14 THE COURT: Well, when you say you,  
15 what do you mean?

16 MS. ROBBINS: Does anyone have any  
17 water? I'm sorry.

18 MR. BUTLER: Sure.

19 MR. KENNEDY: Don't drink their  
20 water, Marianne.

21 MS. ROBBINS: Don't drink their Kool  
22 Aid, isn't that the phrase?

23 MS. ROBBINS: I'm sorry, Mr.  
24 Gerling.

25 THE WITNESS: It's okay.

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1 MS. ROBBINS: Do you have water up  
2 there?

3 THE WITNESS: For now.

4 MS. ROBBINS: We don't want you to  
5 be as parched as counsel is right now. Excuse  
6 me. To get back to the questions, Mr.  
7 Gerling.

8 THE WITNESS: Okay.

9 Q. As of the first day of hearing, you had  
10 not been able to provide to the union the

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11 attrition package that you said you were

12 working on, is that right?

13 A. That's right. It was given to them later  
14 in the week.

15 Q. Okay. And as of the first day of  
16 hearing, you also had not presented to the  
17 union any counterproposal that you were  
18 working on?

19 A. And I had not presented a  
20 counterproposal, that's correct.

21 Q. And you also had not come up with any  
22 firm dates for bargaining as of the beginning  
23 of the hearing on May 9th?

24 A. We set those dates during that week for  
25 them to come to Troy. But on the 9th, no.

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1 Q. But to answer my question --

2 A. But on the 9th, no. But it was a couple  
3 of days later.

4 Q. -- at the beginning of the hearing --

5 A. That's correct, at the beginning of the  
6 hearing --

7 Q. -- there was not?

8 A. -- yes.

9 Q. Now, Mr. Butler would like me to skip  
10 ahead to Exhibit 272, I believe --

11 THE COURT: Did you know that, Mr.  
12 Butler?

13 MS. ROBBINS: Or Mr. Jerman, excuse  
14 me.

15 MR. JERMAN: I'm honored.

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16 MR. BUTLER: Counsel hasn't shared  
17 her examination outline with me, but I -- but  
18 if that's where we're going, I'm delighted to  
19 go there.

20 THE WITNESS: 270 --

21 MS. ROBBINS: I don't even know if I  
22 have that book up there.

23 THE COURT: What do you need?

24 MS. ROBBINS: 270. We'll see if  
25 I've got it right.

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1 A. I have it.

2 Q. Okay. Were you aware of a proposal from  
3 Delphi that essentially said the IAM and IBEW  
4 should not participate in these hearings, but  
5 that they would be treated the same as the  
6 UAW?

7 MR. JERMAN: Objection, Your Honor,  
8 that mischaracterizes the document when  
9 counsel adds.

10 MS. ROBBINS: Well, if you want to  
11 show me where it is.

12 THE COURT: I'm sorry, are you just  
13 asking a general question --

14 MS. ROBBINS: Yeah

15 THE COURT: -- and not referring to  
16 the document?

17 MS. ROBBINS: Well, this is an  
18 explanation. What I have here is Mr. Jerman's  
19 explanation of the proposal. And it's not the  
20 initial proposal, it's an explanation of the

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21 proposal and I --

22 THE COURT: Well, why don't you just  
23 ask the question?

24 MS. ROBBINS: I tried to --

25 THE COURT: It's fine to ask the

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1 question as it is, just based on your general  
2 knowledge as opposed to any specific proposal  
3 or --

4 THE WITNESS: Can you just say the  
5 question again?

6 Q. Okay. Are you familiar with a proposal  
7 Delphi made on or about the beginning of this  
8 hearing, that essentially proposed that the  
9 IAM and IBEW not participate in this hearing  
10 and that they would later be treated the same  
11 as the UAW?

12 A. I'm familiar with that approach that  
13 they -- that offer was going to be made to the  
14 IBEW IAM.

15 Q. I'm going to ask you to take a look at  
16 page 272.

17 THE COURT: Exhibit 272?

18 Q. Exhibit 272, excuse me.

19 A. Okay, now I have it.

20 MS. MEHLSACK: Excuse me Judge, 277  
21 is the original offer.

22 MS. ROBBINS: Uh-huh.

23 A. I have it.

24 Q. Okay.

25 A. Okay.

1 Q. And are you familiar with this document?  
2 A. I've subsequently seen it, yes.  
3 Q. Okay. And do you understand that the  
4 employer's proposal was such that if the UAW's  
5 contract was rejected in these proceedings,  
6 even though the IAM and IBEW would not have  
7 participated, their contracts would be  
8 rejected as well?

9 MR. JERMAN: Objection, best  
10 evidence.

11 MS. ROBBINS: We have the Exhibit  
12 272.

13 MR. JERMAN: No, the proposal is  
14 Exhibit 277 and it's in evidence, and it's the  
15 best evidence of what the proposal was.

16 MS. ROBBINS: Look, Your Honor, I  
17 did not ask him what the initial proposal was.  
18 I was asking him whether this is part of the  
19 proposal that the IAM and IBEW be bound by  
20 this -- by rejection of the UAW contract. And  
21 they may not like this document, but I am  
22 questioning the witness on a document that  
23 came from counsel that he's familiar with.

24 THE COURT: Well --

25 MR. JERMAN: Your Honor, she's

1 questioning this witness about the meaning of  
2 an offer I extended to her. And I just don't

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3 think that by questioning Mr. Gerling, at  
4 least in the manner she's been doing so, is  
5 appropriate. The offer speaks for itself.

6 THE COURT: Well, have you --

7 MS. ROBBINS: Well, a minute ago --

8 THE COURT: Well, let -- Mr.

9 Gerling, have you yourself done anything in  
10 respect of this offer? Have you communicated  
11 it in any -- or discussed it with the union?

12 THE WITNESS: We've had discussion  
13 about the offer that was made, yes.

14 THE COURT: What I'm talking  
15 about -- I'm now talking about the offer that  
16 came from Mr. Jerman --

17 THE WITNESS: Yeah, yes.

18 THE COURT: So you could ask him  
19 about those discussions, that's fine.

20 MS. ROBBINS: Uh-huh.

21 Q. Is it your understanding that under the  
22 proposal, if the IAM and IBEW accepted the  
23 proposal and did not participate in this  
24 hearing, the company's position was, if the  
25 UAW contract was rejected, so was the IBEW and

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1 IAM contracts?

2 A. It would be similar treatment at the  
3 UAW had received, that was my understanding.

4 Q. Did you understand that the IAM and IBEW  
5 did not have flow-back rights that the UAW  
6 has?

7 A. Yes, I'm aware of that.

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8 Q. Were you aware that the IAM and the IBEW  
9 did not have benefit guarantees, at least --

10 MS. ROBBINS: Let me retract that  
11 question. Strike that question.

12 Q. Were you aware that the company's  
13 position has been that they are not aware of  
14 any benefit guarantees for the IAM and IBEW?

15 A. I believe I raised that issue to Randy.  
16 I asked them if they had one, because we were  
17 not aware that they had or done.

18 Q. And sitting here today, you do not know  
19 of any benefit guarantee?

20 A. That's correct.

21 Q. For the IAM and IBEW?

22 A. That's correct.

23 Q. And so, did you understand that treating  
24 the IAM and the IBEW the same as the UAW would  
25 have a much more severe impact on their

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1 members?

2 A. It would have a different impact because  
3 of the benefit guarantees, absolutely.

4 Q. Specifically, the UAW members, if their  
5 retiree benefits, insurance benefits and life  
6 insurance benefits were removed by Delphi,  
7 they would be provided by General Motors, is  
8 that your understanding?

9 A. I'm not a benefit guarantee expert, but I  
10 know there's -- that it speaks to those terms  
11 that if something were to happen within a  
12 certain time frame that the benefit guarantee

13 would cover them.

14 Q. And if Delphi terminated its hourly  
15 pension plan --

16 A. Uh-huh.

17 Q. -- as it seeks the right to, the IAM and  
18 IBEW members could be left with no benefit  
19 from GM to bring them back up to the  
20 contractual pension level?

21 A. As I understand it, that is correct.

22 Q. And because there are substantial  
23 supplemental benefits, that would be a huge  
24 detriment to those who were not already  
25 eligible for full Social Security benefits?

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1 A. No, there would be a difference actually.  
2 I'm not sure what all the supplements speak  
3 to, but it would be less, obviously.

4 Q. You're aware, as the negotiator with the  
5 IAM and IBEW that it would be substantially  
6 less?

7 A. It would be less, I don't know if it's a  
8 hundred, but I generally spoke in terms of  
9 about fifty percent. Less than what the  
10 regular pension was when they -- when we  
11 talked about it.

12 Q. So their pension would be cut in half and  
13 they would not have retiree health benefits?

14 A. Yeah. If they were all terminated, yeah.

15 Q. So under your proposal, the pension could  
16 be cut in half, no retiree benefits and any  
17 concessions that were imposed on the UAW, in

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18 addition to that, would be imposed on them?

19 A. Well there would be retire --

20 MR. JERMAN: Object. That

21 mischaracterizes the record. There was no  
22 proposal from the company on the table, in any  
23 form, to terminate the pension plan. The  
24 proposal is to decrease the plan.

25 MS. ROBBINS: There is a proposal

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1 that would give or claim, acknowledge --  
2 there's a proposal that the company have the  
3 right to do it in the future, Your Honor. And  
4 there is also evidence in this record that the  
5 company says it does not know how it's going  
6 to fund it without a legislative solution.

7 THE COURT: All right. I think the  
8 objection is sustained. You went beyond that,  
9 I think. Assuming that those things -- you  
10 assumed those things would happen. You could  
11 ask it hypothetically, if those things did  
12 happen --

13 MS. ROBBINS: Yes.

14 THE COURT: -- what would the affect  
15 be.

16 MS. ROBBINS: Yeah. And I don't  
17 think that that question is irrelevant in this  
18 proceeding, Your Honor.

19 THE COURT: It was not a relevance  
20 objection, so that's fine. You could ask it  
21 hypothetically if you want to, or I could  
22 treat the answer as a hypothetical response.

23 MS. ROBBINS: I think I got the

24 response.

25 THE COURT: Okay.

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1 Q. Mr. Gerling, are you familiar with a  
2 request that the union made on May 1, 2006,  
3 reiterating a request that it receive  
4 information provided to the UAW experts? And  
5 I think that the -- it's 158 and it's in  
6 volume 6.

7 A. What number?

8 Q. 158.

9 A. Yeah, I've seen this letter.

10 Q. Okay. And did you receive it on or  
11 shortly after May 1st of 2006?

12 A. Yes.

13 Q. And did you understand that this letter  
14 was seeking information that had been provided  
15 to the UAW's expert? Mr. Yearly,  
16 specifically?

17 A. I don't know Mr. Yearly, but that's what  
18 the information request was, yes.

19 Q. Are you aware that there's been no  
20 response to this?

21 A. No, I'm not.

22 Q. Have you checked to see whether there's a  
23 response to this?

24 A. I have checked and my last information  
25 showed that all the responses were addressed.

1 Q. Did you check to see if this request was  
2 even in -- even on -- listed?

3 A. I forwarded the request. I assume it was  
4 in there. I don't know that it wasn't.

5 Q. But you don't know that it was?

6 MR. JERMAN: Objection, Your Honor.

7 Counsel is aware that all of this information,  
8 including the information that was provided to  
9 Lazar is in the virtual data room, to which  
10 they have access. And it seems to me  
11 inappropriate to be asking a line of  
12 questions, implying that the company didn't  
13 provide anything when she knows it's in the  
14 virtual data room and available to her.

15 Q. Mr. Gerling, would you read the last  
16 paragraph of the letter to you, sir?

17 A. "We have not been able to find the  
18 information or referred to in this request or  
19 the upstanding portions of the prior requests  
20 on the website. If you believe it is there,  
21 please give us specific directions on where  
22 and how we can find it. Or better yet, send  
23 us the hard copies."

24 Q. Was there any response to that request?

25 A. From me, no, because I gave it to Mr.

1 McQuee who handles all the information  
2 requests.

3 Q. Now, after the first day of the trial,

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4 May 9, 2006, you've had several meetings with

5 the IAM and the IBEW, is that right?

6 A. That's correct.

7 Q. And you were able, at one point, to reach

8 tentative agreements on some issues, subject

9 to getting an agreement on everything --

10 A. Yes, that's right. That's how we spoke

11 about it, yeah.

12 Q. For example, an agreement on how many

13 holidays there would be?

14 A. They had made a proposal on ten, with the

15 understanding that if anybody got something

16 better, they would want it. So, yeah.

17 Q. There was -- you considered it a

18 tentative agreement?

19 A. Basically, yes.

20 Q. Subject to everything get --

21 A. Yeah. Subject to everything else --

22 Q. -- getting everything else agreed to?

23 And there was an agreement on shift premium?

24 A. The amounts, yes.

25 Q. Okay. And there was an agreement on

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1 discount programs?

2 A. The subsidized discount portion, yes.

3 Q. And, as part of the proposal, the

4 union -- the union's counterproposal, the

5 union had agreed to a wage rate that was

6 twenty-eight dollars per hour, rather than

7 thirty, but keeping the COLA and freezing it?

8 A. I believe that's --

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9 THE COURT: I'm sorry, Ms. Robbins.

10 Is this -- what's the time frame for this? Is  
11 this the April meeting or is this a subsequent  
12 meeting?

13 MS. ROBBINS: This is a subsequent  
14 meeting. Well --

15 THE COURT: When?

16 MS. ROBBINS: I'll withdraw that  
17 question, Your Honor, because that was  
18 confusing.

19 THE COURT: No, you don't have to  
20 withdraw, I just -- I may have missed it. I  
21 was writing a note.

22 MS. ROBBINS: Yeah. That -- I'll  
23 withdraw that statement because it -- let me  
24 go back to that last --

25 THE COURT: Okay.

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1 MS. ROBBINS: -- question and  
2 clarify it. Because the Court is right, I  
3 muddied the waters terribly on that question.

4 Q. In terms of the union's proposal or  
5 counterproposal that reduced the wage rate but  
6 froze the COLA payment --

7 A. Uh-huh.

8 Q. -- that was provided to the company on  
9 April 20th?

10 A. Yes.

11 Q. And there had not been yet a tentative  
12 agreement on that issue?

13 A. That's correct.

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14 Q. Now, you gave a supplemental declaration,  
15 which I have somewhere here. I think it is  
16 280. No, I'm wrong. 280, it's in the  
17 confidential, it's just not in the regular. I  
18 had the number right. Mr. Gerling, Exhibit  
19 280 in the confidential binder, volume 5 of  
20 the confidential binder, is your supplemental  
21 declaration, is that right?

22 A. Yeah.

23 Q. And attached to this declaration are  
24 proposals made to the IAM and IBEW as of May  
25 20, 2006, is that right?

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1 A. Yes, that's correct.

2 Q. And as of that date, if we wanted to see  
3 what the medical insurance proposal was, we  
4 could look at appendix B, is that right?

5 A. For active employees or retired  
6 employees?

7 Q. For active.

8 A. Are you looking at the one dated May  
9 20th?

10 Q. Yes, I am.

11 A. Okay.

12 Q. The first one.

13 A. Okay. I think I have it. No, no, no.  
14 Okay.

15 Q. And your proposal to the IAM as of that  
16 date was a plan that had a 450 individual 900  
17 dollar deductible, is that right?

18 A. That's correct.

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19 Q. And that's not the salaried plan.

20 There's a salaried plan -- there are various  
21 salary plans, but that's not the salaried  
22 plan, is that right?

23 A. I think the phrase that was used when the  
24 benefit folks reviewed it was it's similar to  
25 the salary plan. I don't know the exact co-

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1 pays or deductibles.

2 Q. Well, do you remember the clarification  
3 that -- first of all, does this proposal have  
4 an employee contribution?

5 A. You mean a monthly contribution?

6 Q. Yeah.

7 A. Yeah.

8 Q. And there's a salaried program that  
9 doesn't have a monthly contribution, isn't  
10 that right?

11 A. There may be. I know my health insurance  
12 I have a monthly contribution.

13 Q. You're not familiar with that?

14 A. There may be one, I'm just not sure. I  
15 just know the one I have.

16 Q. Are you aware that there is a salaried  
17 plan that has coverage for doctor visits?

18 A. I can't speak definitively, but I believe  
19 there is.

20 Q. And you're aware that the proposal that  
21 is attached to Exhibit A and that was made to  
22 the IAM as recently as May 20th did not cover  
23 doctor visits?

24 A. I think that when we asked the benefit  
25 folks, routine were not but diagnostic office

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1 visits were covered.

2 Q. Routine were not?

3 A. Subject to the, you know, deductible or  
4 whatever.

5 Q. Routine office visits were not covered?

6 A. That's right. That's what the answer  
7 was.

8 Q. And there was an explanation that the  
9 salaried plan did have coverage for routine  
10 office visits?

11 A. It may have, I don't recall specifically.

12 Q. Now, in this proposal also, page 19, the  
13 proposal for retiree benefits was an account  
14 but no insurance?

15 A. That's correct. There was a retiree  
16 medical account established, based on  
17 employee's years of accredited service, then a  
18 funding for active employees and for retirees.

19 It was just the account based on their years  
20 of service when they retire, even though they  
21 had already retired.

22 Q. And as of the 20th, that was your  
23 proposal to the IAM and IBEW, is that there be  
24 an account, not a health insurance program?

25 A. As of the 20th, that's correct.

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1 Q. Now, yesterday you submitted a new  
2 counterproposal to the IAM and IBEW, is that  
3 right?

4 A. Yes, I did.

5 Q. And you may have to help me with the  
6 exhibit number because --

7 A. I can't help you there.

8 Q. Mr. Butler I'm sure can help, he's been  
9 helping me all morning.

10 MR. BUTLER: 312, I think, may be  
11 the right number. We're just double checking.  
12 For the IAM I believe it's 312.

13 MS. ROBBINS: 312.

14 MR. BUTLER: Yes, Exhibit 312.

15 MS. ROBBINS: We do have lots of  
16 extra copies because I did not know that it  
17 had already been bound. But I'm sure we'd  
18 rather have the one that's numbered.

19 Q. Mr. Gerling, do you have Exhibit 312 in  
20 front of you?

21 A. Yes, I do.

22 Q. And there's, I believe, this is the IAM  
23 proposal and it's dated May 25, 2006?

24 A. Correct.

25 Q. And then there is similar, but not

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1 identical proposals to the IBEW under tabs 313  
2 and 314?

3 A. That's correct.

4 Q. I'm sorry, but there's one question I  
5 forgot to ask you --

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6 A. That's okay.

7 Q. -- before we get to these.

8 A. That's fine.

9 Q. In terms of your discussions with the IAM  
10 and the IBEW on the 20th and 21st of May,  
11 which I believe are described in your  
12 supplemental declaration, during that period  
13 of time, the only proposal -- draft  
14 counterproposal that you actually provided to  
15 the unions was the proposal for the IAM, is  
16 that right?

17 A. Yeah. We were working up one document,  
18 that's correct.

19 Q. And so --

20 THE COURT: I'm sorry, when you say  
21 the unions you mean?

22 MS. ROBBINS: The IBEW and the IAM.

23 THE COURT: All right.

24 Q. When you were meeting with them on the  
25 21st and 20th of May, as per your declaration,

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1 you were just working off of the IAM proposal  
2 that the company had prepared?

3 A. At that time, that was -- we were -- we  
4 hadn't pulled it through all three of the  
5 agreements. We were just using one because  
6 you guys had -- or the IAM IBEW had elected to  
7 bargain together. So that's how we were -- we  
8 had proceeded that way.

9 Q. And so, there was never really any -- a  
10 lot of the provisions were similar for --

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11 A. Most all the provisions are similar.

12 Q. Everybody was -- yeah, right.

13 A. There's only two or three in the union --

14 Q. But, in fact, if we look at your

15 supplemental declaration, the ones for the

16 IBEW were not actually shared across the

17 table?

18 A. That's right, because we were using the

19 IAM one.

20 Q. They were prepared after the fact?

21 A. Right.

22 Q. And before there was any specific

23 discussion about them, you met yesterday, May

24 25th, and Delphi provided new proposals to the

25 IAM and IBEW which are the 312, 313 and 314

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1 documents we have here?

2 A. Correct.

3 Q. And these documents, if we look through

4 them. Let's start with the wage proposal.

5 The prior proposal is crossed out and all we

6 see is pattern treatment?

7 A. No, you have to go back to the first part

8 to get the reference to pattern treatment.

9 Because what we did was, we removed all the GM

10 contingencies in this proposal. And then we

11 said that what we would do, unless it's

12 otherwise noted, would give the IAM IBEW

13 pattern treatment. That's the reference to

14 pattern treatment and how we settled these

15 issues with the UAW. Which has been,

16 historically, how they bargained in the past  
17 on many of their issues. With the exception  
18 of those things that are not striked through.

19 Q. So in terms of base wage rates, you've  
20 crossed out every proposal you've made thus  
21 far to the IAM and you use the term pattern  
22 treatment?

23 A. Uh-huh. That's correct.

24 Q. And in terms of COLA, you've crossed out  
25 everything else and you put in pattern

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1 treatment?

2 A. Correct.

3 Q. And the IAM and the IBEW cannot determine  
4 what they're negotiating because we don't know  
5 what will be agreed to between the UAW and the  
6 company, or what the company will impose,  
7 isn't that right?

8 A. They would accept what -- with the  
9 acceptance of this proposal, they would accept  
10 whatever was negotiated with GM -- with Delphi  
11 and the UAW, which is typically how they've  
12 done it in the past. Oh, I'm sorry. I've got  
13 to remember what I was thinking there. With  
14 the acceptance of this proposal, they would  
15 accept what was negotiated between Delphi and  
16 the UAW, which is how they've patterned in  
17 the -- how they've bargained in the past.

18 Q. But Mr. Gerling, in the past when you  
19 have come to the IAM and the IBEW you have  
20 been able to show the IAM and the IBEW what

21 the UAW and Delphi have agreed to?

22 A. In the past, that's correct.

23 Q. And so this is very different. Because  
24 this time you're not coming to the IAM and the  
25 IBEW saying this is the wage rate for skilled

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1 trades. You're saying whatever ends up being  
2 it, you've accepted it, even though we can't  
3 tell you what it is?

4 A. Well, the UAW proposal is similar to this  
5 one in terms of what is on the table with  
6 them. Which is, you know, for plants that  
7 we're closing wages were going to go down to  
8 twenty-eight dollars an hour. And if it was  
9 subsequently, you know -- a plant was going to  
10 be open, there would be another wage  
11 reduction. So the proposal in front of the UAW  
12 was the same to them.

13 Q. But if the UAW decided that they would  
14 take a larger cut?

15 A. Uh-huh.

16 Q. For the skilled trades, versus the  
17 production trades, then the IAM and the IBEW  
18 would be stuck with that?

19 A. That's correct.

20 Q. And if the company decided -- had the  
21 contract rejected, we don't know what would  
22 happen after that. There might be a strike.  
23 We don't know what the end result would be?

24 A. That's true. We talked about whatever we  
25 imposed, we would impose the same.

1 Q. So your proposal now to the IAM and IBEW  
2 is, we don't have a wage proposal to you, our  
3 proposal is that you end up with whatever is  
4 negotiated or litigated between other parties.  
5 You don't get to know what it is?

6 A. The proposal would be they would accept  
7 whatever had been negotiated, with the  
8 exceptions that are outlined in here.

9 Q. Let's go back to the attrition program at  
10 the back of -- we'll just use 312.

11 A. Okay.

12 Q. Now, the attrition plan that's been  
13 approved by the Court for the UAW includes a  
14 severance benefit for those who are willing to  
15 forego other than vested benefits, 70,000 and  
16 140,000, is that right?

17 A. No, that's not right. Well, I should say  
18 for GM it is but not for Delphi.

19 Q. It's in the attrition program?

20 A. For General Motors employees.

21 Q. It's in the attrition program and  
22 available to people who are currently Delphi  
23 employees?

24 A. No.

25 MR. BUTLER: Objection. That just

1 mischaracterizes the --

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2 MS. ROBBINS: Well, maybe we'll find

3 out what it is.

4 THE COURT: But he says no.

5 MS. ROBBINS: Okay.

6 MR BUTLER: Your Honor, there's an

7 order of this Court that approves that

8 program.

9 THE COURT: Ms. Robbins is entitled  
10 to ask the witness, he just said no.

11 Q. Would you agree that the 70,000 and  
12 140,000, if you're willing to forego your  
13 other benefits and just have your vested  
14 benefits, applies to people who, as of today,  
15 are Delphi employees?

16 A. No, it clearly states in the attrition  
17 document it's for General Motors employees.

18 Q. Aren't we talking about Delphi employees  
19 who check the box?

20 A. No, that's for purposes of retirement.

21 Q. Did you explain this program to the IAM  
22 and IBEW what the UAW had?

23 A. I -- yes, I'm sure -- I know I did, yes.

24 Q. And didn't you refer to the 70 -- 70,000  
25 and 140,000 in the course of those

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1 descriptions?

2 A. Yeah, as it applied to General Motors  
3 employees.

4 Q. And wasn't that described to Delphi  
5 employees of the UAW as well?

6 MR. BUTLER: Objection, asked and

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7 answered.

8 MS. ROBBINS: No, that one wasn't.

9 I didn't ask --

10 THE COURT: When you say described,  
11 you mean explained to them or applied to --

12 MS. ROBBINS: Explained to them.

13 THE COURT: The terms of the  
14 attrition program?

15 MS. ROBBINS: As it applies to the  
16 70 and 140,000 --

17 THE COURT: Was it explained to all  
18 Delphi employees?

19 MS. ROBBINS: The UAW Delphi  
20 employees.

21 THE COURT: The UAW Delphi  
22 employees.

23 MS. ROBBINS: Not --

24 THE COURT: You can answer that  
25 question.

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1 THE WITNESS: I guess I need you to  
2 ask it again.

3 Q. Okay. Did you explain the severance  
4 benefit that was available, under the  
5 attrition program of 70,000 or 140,000 to  
6 forego your nonvested benefits and sever your  
7 employment?

8 A. I explained -- I explained the program  
9 and I explained it as it applied to General  
10 Motors employees. And how it applied to  
11 General Motors employees, because it's in the

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12 document of the seven pages. And when I --  
13 when we explained it, there was some confusion  
14 as to whether Delphi employees were eligible  
15 for it or GM. And we explained that it was GM  
16 and explained how it worked, yes.

17 Q. Okay. And what was the relevance of that  
18 program to Delphi employees?

19 A. What, the buy-outs or something else?

20 Q. The buy-outs.

21 A. Well, it didn't apply to Delphi  
22 employees.

23 Q. What was the relevance of explaining it  
24 to them?

25 A. Because they had questions about it and

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1 they asked if it applied to them, those Delphi  
2 employees. I guess that's the answer.

3 Q. And if they flowed back they would apply  
4 to them, would it not?

5 A. If they are able to flow back within the  
6 application period that General Motors had,  
7 they could -- in theory, they could flow back  
8 and then accept that term.

9 Q. And, as a matter of fact, if we go back  
10 to the proposal you made to the IAM and the  
11 IBEW on May 20th, you had proposed the 70 and  
12 140 severance?

13 A. That was in there, that's correct.

14 Q. And then on the 25th you crossed it out.

15 A. I said we would give them pattern  
16 treatment. Yes. I said, yes, it was -- had

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17 the title pattern treatment underneath it.

18 Q. But the pattern treatment meant that the  
19 70 and 140 would not apply to IAM and IBEW  
20 members in the way that it would apply to UAW  
21 members.

22 A. No, because I believe in the UAW document  
23 they still have severance as an item. And it  
24 hasn't been agreed upon one way or another,  
25 because it wasn't applicable to all Delphi

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1 employees.

2 Q. But they do have through General Motors,  
3 that severance package.

4 A. If they get a flow-back opportunity and  
5 can flow back during the application period.

6 Q. Now, the attrition package between Delphi  
7 and the UAW has a protected fund to assure  
8 that people who take the going to retirement  
9 package have the funds that are promised to  
10 them?

11 A. That's -- I believe that's correct.

12 Q. And that is not part of your proposal to  
13 the IAM and IBEW?

14 A. When we talked about item number 4, we  
15 talked about allowing employees to grow in  
16 accredited service to draw at, with our  
17 original proposal. But a dollar amount  
18 specifying it? No, there isn't in there.

19 Q. Most imp --

20 MS. ROBBINS: Strike that.

21 Q. If an individual were to accept an IBEW

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22 or IAM individual were to accept the proposed  
23 attrition package that are here, they would be  
24 retiring, is that right?

25 A. Yes.

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1 Q. This is only applicable to people who are  
2 retiring?

3 A. Correct.

4 Q. And the people who are retiring will not  
5 have retiree health insurance of the type that  
6 the UAW has, they don't have a guarantee?

7 A. They don't have a benefit guarantee, but  
8 in this proposal we offered them the salaried  
9 health care treatment and design upon  
10 retirement.

11 Q. And you also proposed that the company  
12 have the right to terminate the pension plan?

13 A. That

14 MR. BUTLER: Objection. That just  
15 mischaracterizes this document. I don't think  
16 counsel should be asking questions that are  
17 blatant mischaracterizations of the proposal.

18 THE COURT: Well, he's presenting it  
19 to the union. I think he can answer the  
20 question generally.

21 MS. ROBBINS: It wasn't my choice to  
22 get this proposal yesterday and to have Mr.  
23 Gerling today. We're doing the best we can.

24 A. Would you state your question again?

25 Q. In terms of the pension plan, do you

1 continue to propose that the company have the  
2 right to terminate the pension plan?

3 A. We certainly didn't waive the right to  
4 terminate the pension plan.

5 Q. And if you were to act on your provision  
6 with respect to the right to terminate the  
7 pension plan, employees who elected retirement  
8 would have only about 50 percent of the  
9 pension that a UAW member would have through  
10 the GM guarantee.

11 A. As I understand, it would be reduced, yes.  
12 And I used the number 50 percent before.

13 Q. So the pattern treatment is not pattern  
14 treatment in all respects?

15 A. Because they don't have a benefit  
16 guarantee.

17 Q. And yet you're asking the IAM and the IBEW  
18 to wait and see what is negotiated by other  
19 parties that have other protections?

20 A. We were asking them to accept the pattern  
21 negotiated with Delphi and the UAW.

22 Q. Even though their members would be living  
23 on half as much money afterwards.

24 MR. BUTLER: Objection.

25 Argumentative and this characterizes the

1 record.

2 THE COURT: Sustained.

3 Q. You are aware that the Milwaukee plant is

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4 due to shut down?

5 A. Yes, I am.

6 Q. So when we talk about what people will be  
7 living on, we're talking about what they would  
8 be living on if they're of retirement age?

9 A. Yes, I am.

10 Q. Now, the UAW has a sub-benefit that the  
11 IAM and IBEW do not have, isn't that right?

12 A. The have, what's referred to as income  
13 security funding -- they have what's called  
14 ISPV income security plan.

15 Q. Okay. To respond to my question, there's  
16 something called sub-benefits that the UAW  
17 has?

18 A. Uh-huh.

19 Q. And that the IAM and IBEW don't have?

20 A. That's correct.

21 Q. And if you agree to continue that plan  
22 that will not be offered to the IAM or the  
23 IBEW?

24 A. That's correct.

25 Q. And your proposal on the ISP plan is that

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1 it be frozen?

2 A. At the time the agreement would go --  
3 become effective.

4 Q. You had an agreement, or tentative  
5 agreement on an offer you had made for  
6 relocation of the IAM and IBEW employees, is  
7 that right?

8 A. That's correct.

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9 Q. And you've now rescinded that proposal?

10 A. Based on this document, that's correct.

11 Q. So now there would be no opportunity for  
12 IAM and IBEW members to get relocation costs  
13 if there were a job available in another  
14 Delphi facility?

15 A. Well, as we talked earlier, they don't  
16 have flow-back rights.

17 Q. There are provisions that Delphi will help  
18 to try to find a position for one if it's  
19 available?

20 A. I believe that's correct.

21 Q. But in any case, now you've removed the  
22 relocation rights?

23 A. In this proposal the relocation right --

24 Q. The relocation benefit.

25 A. In this proposal it was removed, yes.

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1 Q. And that had been agreed to previously?

2 A. We had an under -- they had accepted that  
3 before, yes.

4 Q. I'm going to ask you to look at the last  
5 paragraph of your initial declaration, which  
6 is Exhibit 20. You probably have it in front  
7 of you there somewhere.

8 A. Yeah.

9 Q. Paragraph 26, next to the last sentence,  
10 you characterized the union's counter-proposal  
11 of April 20th as not even approaching the  
12 level of modifications required by Delphi. Do  
13 you see that?

14 A. Yeah.

15 Q. Do you have a target dollar amount of  
16 concessions that you are trying to obtain from  
17 the IAM and the IBEW?

18 A. Not a dollar amount, no. We were looking  
19 to get competitive agreements based on what  
20 the wages and benefits would be in the market  
21 place. Because that question was asked and I  
22 -- that was the same answer I gave previously.

23 Not to you but to the committee.

24 Q. So the answer was, you did not provide any  
25 target amount.

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1 A. No. No, other than the wages and the  
2 benefits that are contained in here, but not a  
3 quantifiable lump sum.

4 Q. Isn't it true that the company has done no  
5 survey of skilled trades in the Milwaukee area  
6 to see what is competitive?

7 A. I don't believe we did anything specific  
8 to the Milwaukee region.

9 Q. And that's where your bargaining agreement  
10 is with the IAM and IBEW?

11 A. That's correct.

12 Q. So you don't know what would be  
13 competitive there?

14 A. We've not done a survey, to answer your  
15 question.

16 MS. ROBBINS: Your Honor, those are  
17 the questions that I have.

18 THE COURT: Okay. All right. Who

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19 else wants to examine Mr. Gerling?

20 MS. MEHLSACK: I do, Your Honor, for  
21 the operating engineers.

22 THE COURT: How long do you think  
23 you'll be?

24 MS. MEHLSACK: A while, Your Honor.

25 THE COURT: All right. Well, you

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1 could probably -- I actually just had a couple  
2 of questions.

3 THE WITNESS: Sure.

4 THE COURT: Maybe I'll ask those and  
5 then we'll break. Has the IAM or IBEW in its  
6 discussions with you, sought most favored  
7 nation treatment?

8 THE WITNESS: Yes, that was in their  
9 original April 20th proposal.

10 THE COURT: No, but is that still a  
11 -- is that still an element of their proposal?

12 THE WITNESS: That was their April  
13 20th proposal to us and then we talked about  
14 specific items. We talked about having that  
15 apply to it.

16 THE COURT: But what I'm saying is  
17 that -- is that continuing to be a demand?

18 THE WITNESS: In the -- they've only  
19 given me the April 20th proposal.

20 THE COURT: Okay.

21 THE WITNESS: The other proposals  
22 come from me based on our discussions.

23 THE COURT: Okay. I may have taken

24 this down wrong, but I think when Ms. Robbins  
25 was cross examining Mr. Weber he acknowledged

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1 that 100 percent of the IAM IBEW employees  
2 would be terminated by 2007?

3 THE WITNESS: Well, the plant will  
4 close. But we had offered the attrition  
5 package so the employees that don't retire  
6 under the attrition package, and if we don't  
7 have anything else they would -- assuming that  
8 everything else would be waived, they -- some  
9 of them currently have job security. But if  
10 that was waived, we were offering the  
11 severance package that we would buy out those  
12 employees that didn't qualify for retirement.  
13 But the plant is going to close at the end of  
14 '07 so there's going to be no work there.

15 THE COURT: The people at the other  
16 plants that you're not -- that are being  
17 closed --

18 THE WITNESS: Uh-huh.

19 THE COURT: -- that you're not  
20 covering by this motion, do they not have the  
21 same type of protections under their  
22 collective bargaining agreements?

23 THE WITNESS: No.

24 THE COURT: They don't?

25 THE WITNESS: No.

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6 THE WITNESS: I have not, typically  
7 been asked that. Although this is the first  
8 time I've negotiated with the IAM IBEW.

12 THE WITNESS: Not on an individual  
13 basis, no.

14 THE COURT: All right. I think Ms.  
15 Mehlsack, given that we've been going since  
16 9:00, let's take a break for lunch and we'll  
17 pick up at 1:30.

18 MS. MEHLSACK: Thank you, Your  
19 Honor.

20 MR. BUTLER: Thank you, Your Honor.  
21 THE COURT: And Ms. Robbins you can  
22 follow-up on my questions.

23 (Time noted: 12:11 p.m.)

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2 I N D E X  
3  
4 WITNESS CROSS

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2 I N D E X

3 (continued)

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5 E X H I B I T S

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1 C E R T I F I C A T I O N  
2 I, Esther Accardi, hereby certify that  
3 the foregoing is a true and correct  
4 transcription, to the best of my ability, of  
5 the sound recorded proceedings submitted for  
6 transcription in the matter of:  
7 Delphi Corporation.

8  
9 I further certify that I am not employed  
10 by nor related to any party to this action.

11  
12 In witness whereof, I hereby sign this  
13 date:  
14 May 30, 2006.

15

16 \_\_\_\_\_

17 Esther Accardi

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